

v. 2810

No. 13503

United States
Court of Appeals
for the Ninth Circuit

GIULIO PARTICELLI, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ESTATE OF ELETTA PARTICELLI, Deceased,
and ARTHUR GUERRAZZI, Executor,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of Record

In Two Volumes

VOLUME I.

(Pages 1 to 312, inclusive)

Petitions to Review a Decision of The Tax Court
of the United States

PAUL F. O'BRIEN
CLERK

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Amendment to Petition for Redetermination of Deficiency (25440)	39
Answer to Amendment to Petition and Amended Answer (25440)	40
Answer to Petition for Redetermination of De- ficiency:	
Docket No. 25439	23
Docket No. 25440	36
Appearances	1
Certificate of Clerk to Transcript	91
Counter Designation of Record on Review (USCA)	631
Decision:	
Docket No. 25439	80
Docket No. 25440	81
Designation of Record, Statement of Points and (USCA)	626

Findings of Fact and Opinion, Memorandum (Nos. 25439-25440)	58
Minutes—May 17-18-19, 1950—Order Granting Motion to Keep Record Open for Stipulation and Depositions	42
Motion for Leave to Amend Petition (25440)...	38
Motion to Ratify and Confirm Execution of Pe- tition (25440)	34
Opinion	70
Order Amending Caption of Proceedings (25440)	34
Order of Consolidation	91
Petition for Redetermination of Deficiency (25439)	3
Exhibit A—Notice of Deficiency	11
Exhibit B—Power of Attorney	20
Petition for Redetermination of Deficiency (25440)	25
Exhibit A—Notice of Deficiency	31
Petition for Review (25439)	82
Notice of Filing	85
Petition for Review (25440)	86
Notice of Filing	89
Statement of Points and Designation of Record (USCA)	626
Stipulation and Order for Consolidation.....	90

Stipulation of Facts (25439-25440).....	43
Exhibit A-1—Agreement of Sale dated Dec. 6, 1943, G. Particelli and John Dumbra....	45
Exhibit B-2—Letter dated Dec. 21, 1943, Tiara Products Co. to Bank of Sonoma County	46
Exhibit C-3—Letter of Dec. 21, 1943, Tiara Products Co. to Bank of Sonoma County..	47
Exhibit D-4—Copy of Instructions to Bank of Sonoma County signed Tiara Products Co. by A. M. Mull, Jr.....	48
Exhibit E-5—Letter dated Dec. 21, 1943, G. Particelli and Eletta Particelli to Bank of Sonoma County	50
Exhibit F-6—Letter dated Dec. 21, 1943, G. Particelli and Eletta Particelli to Bank of Sonoma County	51
Exhibit G-7—Copy of Bill of Sale dated Dec. 21, 1943	52
Exhibit H-8—Copy of Bill of Sale of Bulk Wine dated Dec. 21, 1943	53
Exhibit I-9—Copy of Grant Deed dated Dec. 21, 1943	55
Stipulation of Facts II (25439-25440).....	57
Stipulation that Exhibits May Be Considered in Original Form (USCA)	630

Transcript of Proceedings and Testimony..... 93

Witnesses:

Alberigi, F.

—direct	356
—cross	359
—redirect	365
—recross	369
—recalled, direct	387

Branger, Phillip

—direct	219
—cross	227
—redirect	228

Dumbra, John (Deposition)

—direct	570
—cross	579
—redirect	582, 588
—recross	584

Dumbra, Victor J. (Deposition)

—direct	589
—cross	605
—redirect	618, 623
—recross	621

Foster, Fred J.

—direct	396
—cross	401

Transcript of Proceedings—(Continued)

Witnesses—(Continued)

Gomberg, Louis R.

—direct	409, 463
—cross	480
—redirect	505
—recross	506
—recalled, redirect	512
—recross	516

Gould, Glenard

—direct	518
---------------	-----

Guerazzi, Arthur

—rebuttal, direct	383
—cross	384

Guerrazza, Mrs. Arthur

—direct	230
—cross	243

Guerrazza, Clotilde

—rebuttal, direct	395
-------------------------	-----

Hotle, H. L. (Deposition)

—By Mr. Brookes	532
—By Mr. Marcussen	546

Meyers, Harry P.

—direct	308
—cross	312

Transcript of Proceedings—(Continued)

Witnesses—(Continued)

Mondavi, Robert

—direct	312
—cross	324
—redirect	343
—recross	350

Mull, A. M. Jr.

—direct	290
—cross	303
—redirect	307

Oefinger, George

—direct	261
—cross	270
—redirect	289

Particelli, Giulio

—direct	94
—cross	108
—redirect	198
—recross	210, 218
—rebuttal, direct	370
—cross	379
—redirect	507
—recross	509

APPEARANCES:

For Petitioner:

GEORGE E. OEFINGER, C.P.A.
HARRISON H. SIMPSON, Esq.,
VALENTINE BROOKES, Esq.

For Respondent:

LEONARD ALLEN MARCUSSEN, Esq.,
R. C. WHITLEY, Esq.

The Tax Court of the United States

Docket No. 25,439

GIULIO PARTICELLI,

Petitioner,

vs.

COMMISSIONER OR INTERNAL REVENUE,
Respondent.

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Bureau symbols: San Francisco Division, IRA:90-D : DRU (C-TS : PD : SF : WGW)) dated July 21, 1949, and as a basis of his proceeding alleges as follows:

1. The petitioner is an individual with his principal residence at 1350 Francisco Street, San Francisco, California.
2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the petitioner on July 21, 1949.
3. The petitioner is the same person as is addressed as "Guilio Particelli" in said notice of deficiency.
4. The taxes in controversy are individual income and victory taxes for the calendar year 1943 in the amount of \$62,222.85.

5. The determination of tax set forth in said notice of deficiency is based upon the following errors:

(a) The Commissioner erred in reducing the deduction allowable for depreciation on business assets in which petitioner had a community property interest to an amount less than \$3,012.25 for the calendar year 1942 and to an amount less than \$4,904.50 for the calendar year 1943.

(b) The Commissioner erred in determining that of the total consideration of \$350,000.00 received during the calendar year 1943 for wine, winery and equipment, in which the petitioner had a community property interest:

(1) An amount less than \$273,000.00 should be allocated to the winery and equipment, and

(2) An amount more than \$77,000.00 should be allocated to the wine.

(c) The Commissioner erred in determining that the tax basis of said winery and equipment was an amount less than \$55,366.00.

(d) The Commissioner erred in reducing the deduction allowable for amounts expended by petitioner from community property funds during the calendar year 1943 for the purchase of grapes to an amount less than \$117,618.73.

(e) The Commissioner erred in reducing the deduction allowable for compensation paid by petitioner from community property funds during the calendar year 1943 for the services of one Arthur Guerrazzi to an amount less than \$5,600.00.

(f) The Commissioner erred in reducing the deduction allowable for compensation paid by petitioner from community property funds during the calendar year 1943 for the services of one Clotilde Guerrazzi to an amount less than \$5,600.00.

6. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

Error (a)—Depreciation on business assets:

1. The dates of acquisition, the adjusted basis as at January 1, 1942, and the reasonable allowance for depreciation on business assets in which petitioner had a community property interest during the calendar years 1942 and 1943 are as follows:

Giulio Particelli vs.

Particulars	Date Acquired	Cost	Rate	1942	1943	Prior Years
				\$	\$	
WINERY IN FORESTVILLE:						
Land—2 acres and fill.....	1940	\$ 900.00		....	....	\$....
Winery building "A" concrete.....	1941	12,000.00	3%	360.00	360.00	180.00
Winery building "B" wood.....	1942	7,000.00	4	140.00	280.00	....
Winery building "C" wood.....	1943	7,000.00	4	....	140.00	....
Scales and office building—wood.....	1942	1,500.00	5	37.50	75.00	....
Tanks (323,504 gals.)—wood.....	1941-43	12,940.00	5	211.00	647.00	211.00
Crusher, conveyor and motor.....	1943	2,500.00	5	....	250.00	....
Presses.....	1941-43	3,000.00	10	200.00	300.00	100.00
Boiler—oil.....	1941	1,500.00	10	150.00	150.00	75.00
Pumps (3).....	1941-42-43	1,500.00	10	75.00	125.00	25.00
Filters (2).....	1942-42	1,500.00	15	75.00	225.00	....
Inside conveyors and motors.....	1943	1,700.00	10	....	170.00	....
Pipe lines and valves.....	1941-42-43	1,250.00	10	75.00	125.00	25.00
Brass faucets, fittings and winery tools.....	1941-42-43	1,500.00	10	75.00	125.00	25.00
Pump house and well.....	1941	2,000.00	5	100.00	100.00	50.00
Fence around winery.....	1941	500.00	10	50.00	50.00	25.00
Cement mixer.....	1943	125.00	20	....	25.00	....
Grape boxes—400 old.....						
Grape boxes—3500 new.....	1942-43	1,750.00	10	87.50	175.00	....
Wine hose.....	1941-42-43	1,000.00	10	50.00	50.00	25.00
		<u>\$61,165.00</u>		<u>\$1,686.00</u>	<u>\$3,372.00</u>	<u>\$741.00</u>

Commissioner of Internal Revenue

Particulars	Date Acquired	Cost	Rate	1942	1943	Prior Years
FARMING PROPERTIES, ETC:						
Building in Forestville.....	8-26-37	\$ 3,600.00	5%	\$ 180.00	\$ 180.00	\$ 720.00
Improvements	1937	1,500.00	5	75.00	75.00	300.00
Fixtures and office equipment.....	1936-39	750.00	10	75.00	75.00	225.00
Filling machine, washing machine, tools and bottle corker	1937-39	750.00	10	75.00	75.00	225.00
Ranch properties:						
Residence	1931	6,000.00	....	....	....	....
Garage — Double A.....	1931	500.00	5	25.00	25.00	250.00
Cottage — 2 rooms.....	1940	500.00	5	25.00	25.00	25.00
Pump house and well.....	1925	1,000.00	5	50.00	50.00	800.00
Garage and woodshed B.....	1933	1,000.00	5	50.00	50.00	400.00
Barn	1925	500.00	5	25.00	25.00	400.00
Chicken house.....	1930	200.00	5	10.00	10.00	110.00
Farm implements, plows, cultivators, harrows, etc.....	1939-43	500.00	12½	31.25	62.50	93.75
Grape vines — 30 acres.....	1925-40	6,000.00	3	180.00	180.00	1,440.00
Well	1943	400.00	10	....	20.00	....
Fence posts.....	1943	400.00	20	....	40.00	....
G.M. Co. truck	1940	1,500.00	20	300.00	300.00	450.00
Chevrolet	1938	1,000.00	20	200.00	100.00	700.00
Chevrolet pickup.....	Nov. 1942	950.00	20	....	190.00	....
Horses (3).....	1939-43	500.00	10	25.00	50.00	75.00
		\$27,550.00		\$1,326.25	\$1,532.50	\$6,213.75
		\$88,715.00		\$3,012.25	\$4,904.50	\$6,954.75

2. All of said business assets which are described as "Winery in Forestville" were used exclusively for business purposes from the dates of acquisition to the date said winery was sold.

3. All of said business assets which are described as "Farming Properties, Etc.," were used exclusively for business purposes from the dates of acquisition to December 31, 1943.

Error (b)—Allocation of consideration received on sale of wine, winery and equipment:

1. On or about December 6, 1943, petitioner as seller entered into an "Agreement of Sale" in which he agreed to sell and one John Dumbra agreed to buy "All that certain winery known as Lucca Winery located at Forestville, Sonoma County, California, together with two acres more or less of land on which said winery is located, all buildings now located thereon, all fixtures, equipment, supplies (other than wine), goodwill, trade names, formulas, and all other personal property of every kind and description now belonging to or a part of said Lucca Winery, for the total sum of \$273,000.00."

2. In a separate paragraph in said agreement of sale it was further understood and agreed that petitioner would sell and the said John Dumbra would buy "275,000 gallons of wine now in storage in said Lucca Winery at the total price of \$77,000.00."

3. Said agreement of sale was executed in accordance with its terms prior to December 31, 1943.

4. The consideration of \$77,000.00 paid for the 275,000 gallons of wine included in said agreement of sale was the maximum price at which said wine

could be sold at the date of the agreement without violating the regulations of the Office of Price Administration covering the sale of bulk wines.

Error (c)—Tax basis of winery and equipment:

1. The adjusted basis for determining gain or loss from said sale of winery, land, buildings, fixtures, equipment, supplies (other than wine), goodwill, trade names, formulas, and all other personal property of every kind and description belonging to or a part of said Lucca Winery was an amount not less than \$55,366.00.

Error (d)—Decrease in cost of grapes purchased:

1. During the calendar year 1943 petitioner expended from community property funds the total amount of \$117,618.73 for the purchase of grapes.

2. All of said grapes were purchased and used by petitioner in the production of wine for sale to customers in the ordinary course of his business.

Error (e)—Compensation paid Arthur Guerrazzi:

1. During the calendar year 1943, petitioner paid one Arthur Guerrazzi from community property funds the amount of \$5,600.00 solely as compensation for services rendered in the conduct of petitioner's business.

2. Said Arthur Guerrazzi was employed as a full-time salesman.

3. Said \$5,600.00 did not exceed the reasonable value of the services of the said Arthur Guerrazzi to the petitioner for the calendar year 1943.

Error (f)—Compensation paid Clotilde Guerrazzi:

1. During the calendar year 1943, petitioner paid one Clotilde Guerrazzi from community property funds the amount of \$5,600.00 solely as compensation for services rendered in the conduct of petitioner's business.

2. Said Clotilde Guerrazzi was a full-time employee engaged in the operation of petitioner's retail liquor store in Forestville, California; in bottling wine for sale; in keeping records; and in performing miscellaneous other activities connected with the business.

3. Said \$5,600.00 did not exceed the reasonable value of the services of the said Clotilde Guerrazzi to the petitioner for the calendar year 1943.

Wherefore, the petitioner prays that this Court may hear the proceeding and determine that no deficiency in income and victory taxes is due from this petitioner for the calendar year 1943.

/s/ GEORGE E. OEFINGER, C.P.A.,

/s/ HARRISON H. SIMPSON,

Counsel for Petitioner

State of California,
County of Sonoma—ss.

H. L. Hotle, being duly sworn, says that he is attorney-in-fact for the petitioner above-named; that the petitioner has been outside the United States at all times since July 21, 1949, the date of the Commissioner's notice of deficiency; that affiant is authorized under his power of attorney from petitioner (a copy of which is attached and marked Ex-

hibit B) to execute this petition for the petitioner; that affiant has read the foregoing petition and is familiar with the statements contained therein; and that to the best of his knowledge and belief such statements are true.

/s/ H. L. HOTLE,
as Attorney-in-fact for Guilio
Particelli

Subscribed and sworn to before me this 6th day
of October, 1949.

[Seal] /s/ S. K. McMULLIN,
Notary Public

EXHIBIT A

Form 1279 (Rev. Mar. 1946) SN-IT-7

Treasury Department
Internal Revenue Service

74 New Montgomery St., San Francisco 5, Calif.
Office of Internal Revenue Agent in Charge
San Francisco Division.

IRA:90-D:DRU (C:TS:PD SF:WGW)

Mr. Guilio Particelli
1350 Francisco St., San Francisco, Calif.

Dear Mr. Particelli:

You are advised that the determination of your income and victory tax liability for the taxable year ended December 31, 1943, discloses a deficiency of \$62,222.85, as shown in the statement attached.

In accordance with the provisions of existing in-

Exhibit A—(Continued)

ternal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington 25, D.C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, San Francisco 5, California for the attention of Conference Section. The signing and filing of this form will expedite the closing of your return (x) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

GEO. J. SCHOENEMAN,
Commissioner

/s/ By F. M. HARLESS,
Internal Revenue Agent in
Charge

Enclosures: Statement, Form 1276, Form of Waiver,
Exhibit A.

Exhibit A—(Continued)

Statement

Tax Liability for the Taxable Year Ended December 31, 1943:

	Deficiency
Income and victory tax.....	\$62,222.85

In making this determination of your tax liability, careful consideration has been given to your protest filed August 31, 1948 and to the statements made at the conferences held on October 5, 1948 and May 27, 1949.

A copy of this letter and statement has been mailed to your representative, Mr. George E. Oefinger, c/o Arthur Andersen & Co., 1722 Russ Building, San Francisco, California, in accordance with the authority contained in the power of attorney executed by you and on file in this office.

ADJUSTMENTS TO NET INCOME

Year 1942

Net income as disclosed by return (joint return).....	\$3,410.50
Nontaxable income and additional deductions:	
(a) Business income.....	519.95
	<hr/>
Net income as adjusted.....	\$2,890.55

EXPLANATIONS OF ADJUSTMENTS

(a) Business income is decreased by \$519.95 due to the following adjustments:

Decrease:

(1) Depreciation allowed.....	\$1,720.00
-------------------------------	------------

Exhibit A—(Continued)

Increase:

(2) Truck purchase payments disallowed....	\$920.00	
(3) Bad debt deduction disallowed.....	280.05	1,200.05

Net decrease\$ 519.95

(1) You claimed no depreciation on your return for 1942. You now contend that the allowable depreciation for 1942 should be \$3,012.25, divisible equally with your spouse. The amount allowable as a deduction for depreciation for 1942 has been found to be \$1,720.00, divisible equally with your spouse. (Exhibit A attached hereto.)

(2) You deducted the amount of \$920.00 representing payments made on new trucks. The deduction is disallowed for the reason that such payments constitute a capital expenditure, cost of which is recoverable through depreciation.

(3) Bad debt deduction in the amount of \$280.05 is disallowed since your books are maintained on the cash basis and the sales from which the debts arose were never reported as income.

COMPUTATION OF TAX—Year 1942

Net income (joint return).....	\$2,890.55	
Less: Personal exemption.....		1,200.00
Balance (surtax net income).....	\$1,690.55	
Less: Earned income credit (10% of \$2,890.55).....		289.06
Net income subject to normal tax.....	\$1,401.49	
Normal tax at 6% on \$1,401.49.....	\$	84.09
Surtax on \$1,690.55.....		219.77
Total tentative income tax liability.....	\$	303.86
Your one-half share.....	\$	151.93

ADJUSTMENTS TO NET INCOME—Year 1943

	Income Tax Net Income	Victory Tax Net Income
Net income as disclosed by return..	\$ 53,198.88	\$(1,209.62
Unallowable deductions and additional income:		
(a) Business income.....	121,105.75	121,105.75
Total	\$174,304.63	\$119,896.13

Exhibit A—(Continued)

Nontaxable income and additional deductions:

(b) Net capital gain	\$49,138.50		\$0.00	
(c) Contributions	153.50	49,292.00	0.00	0.00
	<hr/>	<hr/>	<hr/>	<hr/>
Net income as adjusted.....	\$125,012.61			\$119,896.13

EXPLANATIONS OF ADJUSTMENTS

(a) Your income from business has been increased as follows:

(1) Depreciation disallowed	\$ 2,384.50
(2) Wine sales increased.....	225,500.00
(3) Grape cost decreased.....	7,020.00
(4) Labor costs decreased.....	7,000.00
(5) Contributions	307.00

Total	\$242,211.50
One-half applicable to each spouse.....	\$121,105.75

(1) You claimed depreciation on your return for 1943 in the amount of \$4,904.50. The amount allowable as a deduction for depreciation for 1943 has been found to be \$2,520.00. (Exhibit A attached hereto.)

(2) In the year 1940 you acquired certain land and in the years 1941 to 1943 constructed thereon a winery and acquired winery equipment at a cost of approximately \$30,500. In December 1943 you sold said winery and 275,000 gallons of wine for the sum of \$350,000. You allocated \$77,000 of the sale price to the wine and \$273,000 to the winery and equipment. You claimed a cost basis of \$55,366 for the winery and equipment and reported a gain from the sale of capital assets in the amount of \$217,634. It is held that a fair allocation of the sale price of \$350,000 requires that \$302,500 be attributed to the wine and \$47,500 to the winery and equipment. As a consequence the selling price of the wine has been increased in the amount of \$225,500.

(3) Information at hand discloses that you overstated the cost of

Exhibit A—(Continued)

grapes purchased in the amount of \$3,510 and included as a buying commission the additional amount of \$3,510. You have stated that you performed your own buying. There is no proof of payment of \$3,510 described as buying commission. The amount of \$7,020 is excluded from your costs.

(4) A payment of \$10,000 was made to your daughter and her husband which you claimed as a deduction in 1943 and included in labor costs. You state that the above-mentioned amount was in addition to \$600 paid to each of them in 1943. It is held that \$3,000 of the above-mentioned amount of \$10,000 is deductible as additional compensation paid to your daughter and the remainder, namely, \$7,000, is not an allowable deduction.

(5) Contributions claimed by you as business expense should be claimed under Section 23(1), Internal Revenue Code.

(b) The gain reported by you from the sale of your winery is adjusted as follows:

	As returned	As determined herein
Amount allocated to sale		
price of winery.....	\$273,000.00	\$47,500.00
Cost of property sold		
(less depreciation).....	55,366.00	26,420.00
	<hr/>	<hr/>
Capital gain (brought forward).....	\$217,634.00	\$21,080.00
Gain or loss to be taken into account—		
50% (assets held more than six months)	108,817.00	10,540.00
	<hr/>	<hr/>
One-half applicable to		
each spouse.....	\$ 54,408.50	\$ 5,270.00
Reduction in capital gain.....		\$49,138.50

(c) Deduction of \$153.50 for contributions is allowed herein representing your community one-half share of total contributions of \$207.00 which were disallowed as a business expense in item (a) (5) above.

Exhibit A—(Continued)

COMPUTATION OF ALTERNATIVE TAX

Year 1943

Net income.....	\$125,012.63
Less: Net long-term capital gain.....	5,270.00
	<hr/>
Ordinary net income.....	\$119,742.63
Less: Personal exemption.....	600.00
	<hr/>
Surtax net income.....	\$119,142.63
Less: Earned income credit.....	1,400.00
	<hr/>
Income subject to normal tax.....	\$117,742.63
	<hr/>
Normal tax at 6% on \$117,742.63.....	\$ 7,064.56
Surtax on \$119,142.63.....	74,262.68
	<hr/>
Partial tax.....	\$ 81,327.24
Add: 50% of excess of net long-term capital gain over net short-term capital loss.....	2,635.00
	<hr/>
Alternative tax.....	\$ 83,962.24
	<hr/> <hr/>

COMPUTATION OF TAX

Year 1943

Income tax net income	\$125,012.63
Less: Personal exemption.....	600.00
	<hr/>
Surtax net income.....	\$124,412.63
Less: Earned income credit.....	1,400.00
	<hr/>
Balance subject to normal tax.....	\$123,012.63
	<hr/>
Normal tax at 6% on \$123,012.63.....	\$ 7,380.76
Surtax on \$124,412.63.....	78,425.98
	<hr/>
Total income tax.....	\$ 85,806.74
Total alternative tax.....	\$ 83,962.24
Total income tax.....	\$ 83,962.24

Exhibit A—(Continued)

Victory tax net income.....	\$119,896.13	
Less: Specific exemption.....	624.00	
	<hr/>	
Income subject to victory tax.....	\$119,272.13	
	<hr/>	
Victory tax before credit (5% of \$119,272.13).....	\$ 5,963.61	
Less: Victory tax credit—maximum.....	500.00	
	<hr/>	
Net victory tax.....		5,463.61
		<hr/>
Income and victory tax for 1943.....		\$ 89,425.85
		<hr/>
Income tax for 1942.....		\$ 151.93
		<hr/>
Amount of 1942 or 1943 tax, whichever is larger.....		\$ 89,425.85
Forgiveness feature:		
Amount of 1942 or 1943 tax whichever is smaller.....	\$ 151.93	
Amount forgiven ($\frac{3}{4}$ of \$151.93).....	113.95	
	<hr/>	
Amount unforgiven.....		37.98
		<hr/>
Correct income and victory tax liability....		\$ 89,463.82
Income and victory tax disclosed by re- turn; page 4—line 20		
Original, Account No. 962787 First California District.....		27,240.97
		<hr/>
Deficiency of income and victory tax.....		\$ 62,222.85

EXHIBIT A—(Continued)

Description	Date Acquired	Depreciation					Depreciation	
		Cost	Estimated Life	Depreciation Allowed or Allowable Prior Years	Unrecovered Cost 1-1-42	1942	1943	
Ranch Property:	Prior to							
Machinery and equipment.....	1932	\$ 1,000.00	10 years	\$ 1,000.00	\$ 0.00	\$ 0.00	\$ 0.00	
Machinery and equipment.....	1937	1,000.00	10 years	500.00	500.00	50.00	50.00	
Liquor Store	1938	4,000.00	25 years	640.00	3,360.00	160.00	160.00	
Machinery and equipment.....	1938	1,500.00	10 years	600.00	900.00	150.00	150.00	
Winery:								
Building	1941	6,500.00	25 years	260.00	6,240.00	260.00	260.00	
Trucks and equipment.....	1941	1,500.00	5 years	300.00	1,200.00	300.00	300.00	
Buildings	1942-1943	10,000.00	25 years	0.00	10,000.00	200.00	400.00	
Winery equipment.....	1942-1943	12,000.00	10 years	0.00	12,000.00	600.00	1,200.00	
Total depreciation allowed.....						\$1,720.00	\$2,520.00	
Amount claimed.....						0.00	4,904.50	
Adjustment—increase or decrease						\$1,720.00	(\$2,384.50)	

EXHIBIT B

POWER OF ATTORNEY

Know All Men By These Presents: That I, Giulio Particelli, of the City of Sebastopol, County of Sonoma, State of California, have made, constituted and appointed, and by these presents do make, constitute and appoint H. L. Hotle of the City of Sebastopol, County of Sonoma, State of California, my true and lawful attorney for me and in my name, place, and stead, and for my use and benefit, to ask, demand, sue for, recover, collect and receive all such sums of money, debts, dues, accounts, legacies, bequests, interests, dividends, annuities and demands whatsoever as are now or shall hereafter become due, owing, payable or belonging to me, and have, use and take all lawful ways and means in my name or otherwise for the recovery thereof, by attachments, arrests, distress or otherwise, and to compromise and agree for the same, and acquittances, or other sufficient discharges for the same, for me, and in my name, to make, seal and deliver; to bargain, contract, agree for, purchase, receive, and take lands, tenements, hereditaments and accept the seizin and possession of all lands and all deeds and other assurances, in the law therefor, and to lease, let, demise, bargain, sell, remise, release, convey, mortgage, encumber by Deed of Trust and hypothecate lands, tenements and hereditaments, upon such terms and conditions, and under such covenants, as he shall think fit. Also to endorse checks payable to me and to deposit the same in my com-

Exhibit B—(Continued)

mercial account in the Bank of Sonoma County, at Sebastopol, California, and to draw checks in my name on my said commercial account in the Bank of Sonoma County at Sebastopol, California; Also to bargain and agree for, buy, sell, mortgage, hypothecate and in any and every way and manner deal in and with goods, wares, and merchandise, choses in action and other property in possession or in action, and to make, do, and transact all and every kind of business of what nature or kind soever, and also for me and in my name, and as my act and deed, to sign, seal, execute, deliver and acknowledge such deeds, leases and assignments of leases, covenants, indentures, agreements, mortgages, deeds of trust, hypothecations, bottomries, charter-parties, bills of lading, bills, bonds, notes, receipts, evidences of debts, releases and satisfaction of mortgage, deeds of trust, judgments and other debts, and such other instruments in writing of whatever kind and nature as may be necessary or proper in the premises. Also, in the event any legal question arises in connection with any of my business affairs that my said attorney in fact may be from time to time handling hereunder, to consult S. K. McMullin, Attorney at Law, Santa Rosa, California, concerning the same, and to pay said S. K. McMullin for his services in connection therewith.

Giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully

Exhibit B—(Continued)

to all intents and purposes as I might or could do if personally present, with full power of substitution or revocation, hereby ratifying and confirming all that my said attorney or his substitute or substitutes, shall lawfully do or cause to be done by virtue of these presents.

Witness my hand this 29th day of April, 1949.

/s/ GIULIO PARTICELLI

State of California,
County of Sonoma—ss.

On this 29th day of April, in the year One Thousand Nine Hundred and Forty-nine, before me, S. K. McMullin, a notary public in and for said County of Sonoma, State of California, residing therein, duly commissioned and sworn, personally appeared Giulio Particelli known to me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same.

In Witness Whereof I have hereunto set my hand and affixed my official seal in the City of Santa Rosa in said County the day and year in this certificate first above written.

[Seal] /s/ S. K. McMULLIN,
Notary Public in and for the County of Sonoma,
State of California. My Commission expires
January 14, 1950.

[Endorsed]: T.C.U.S. Filed Oct. 17, 1949.

[Title of Tax Court and Cause No. 25439.]

ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed by the above-named petitioner admits and denies as follows:

1 to 4, inclusive. Admits the allegations contained in paragraphs 1 to 4, inclusive, of the petition.

5. (a) to (f), inclusive. Denies that the Commissioner erred in the determination of the deficiencies as alleged in subparagraphs (a) to (f), inclusive, of paragraph 5 of the petition.

6. (a) 1, 2 and 3. Denies the allegations contained in subparagraphs (a) 1, 2 and 3 of paragraph 6 of the petition.

6. (b) 1. Admits the allegations contained in subparagraph (b) 1 of paragraph 6 of the petition, except denies that the selling price of the winery was \$273,000.00.

6. (b) 2. Admits the allegations contained in subparagraph (b) 2 of paragraph 6 of the petition, except denies that the selling price of the wine was \$77,000.00.

6. (b) 3 and 4. Denies the allegations contained in subparagraphs (b) 3 and 4 of paragraph 6 of the petition.

6. (c) 1. Denies the allegations contained in subparagraph (c) 1 of paragraph 6 of the petition.

6. (d) 1 and 2. Denies the allegations contained in subparagraphs (d) 1 and 2 of paragraph 6 of the petition.

6. (e) 1. Admits that during the calendar year 1943, petitioner paid one Arthur Guerrazzi the amount of \$5,600.00, but denies the remaining allegations contained in subparagraph (e) 1 of paragraph 6 of the petition.

6. (e) 2 and 3. Denies the allegations contained in subparagraphs (e) 2 and 3 of paragraph 6 of the petition.

6. (f) 1. Admits that during the calendar year 1943, petitioner paid one Clotilde Guerrazzi the amount of \$5,600.00, but denies the remaining allegations contained in subparagraph (f) 1 of paragraph 6 of the petition.

6. (f) 2 and 3. Denies the allegations contained in subparagraphs (f) 2 and 3 of paragraph 6 of the petition.

7. Denies generally and specifically each and every allegation in the petition not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and the petitioner's appeal denied.

/s/ CHARLES OLIPHANT,

Chief Counsel, Bureau of Internal
Revenue

Of Counsel:

B. H. NEBLETT,
Division Counsel

T. M. MATHER,
LEONARD ALLEN MARCUSSEN,
Special Attorneys,
Bureau of Internal Revenue.

[Endorsed]: T.C.U.S. Filed Dec. 6, 1949.

The Tax Court of the United States

Docket No. 25440

ELETTA PARTICELLI, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Bureau symbols: San Francisco Division, IRA : 90-D : DRU (C-TS : PD:SF:WGW)) dated July 21, 1949, and as a basis for her proceeding alleges as follows:

1. The petitioner is an individual with her principal residence at 1350 Francisco Street, San Francisco, California.

2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the petitioner on July 21, 1949.

3. The taxes in controversy are individual income and victory taxes for the calendar year 1943 in the amount of \$62,222.85.

4. The determination of tax set forth in said notice of deficiency is based upon the following errors:

(a) The Commissioner erred in reducing the deduction allowable for depreciation on business assets in which petitioner had a community property interest to an amount less than \$3,012.25 for the calendar year 1942 and to an amount less than \$4,904.50 for the calendar year 1943.

(b) Commissioner erred in determining that of the total consideration of \$350,000.00 received during the calendar year 1943 for wine, winery and equipment, in which the petitioner had a community property interest:

(1) An amount less than \$273,000.00 should be allocated to the winery and equipment, and

(2) An amount more than \$77,000.00 should be allocated to the wine.

(c) The Commissioner erred in determining that the tax basis of said winery and equipment was an amount less than \$55,366.00.

(d) The Commissioner erred in reducing the deduction allowable for amounts expended by petitioner's husband, Giulio Particelli, from community property funds during the calendar year 1943 for the purchase of grapes to an amount less than \$117,618.73.

(e) The Commissioner erred in reducing the deduction allowable for compensation paid by peti-

tioner's husband from community property funds during the calendar year 1943 for the services of one Arthur Guerrazzi to an amount less than \$5,600.00.

(f) The Commissioner erred in reducing the deduction allowable for compensation paid by petitioner's husband from community property funds during the calendar year 1943 for the services of one Clotilde Guerrazzi to an amount less than \$5,600.00.

6. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

Error (a)—Depreciation on business assets.

1. The dates of acquisition, the adjusted basis as at January 1, 1942, and the reasonable allowance for depreciation on business assets in which the petitioner had a community property interest during the calendar years 1942 and 1943 are as follows:

[Printer's Note: The two tabulated pages are duplicates of pages 6-7 set out in full in this printed record.]

2. All of said business assets which are described as "Winery in Forestville" were used exclusively for business purposes from the dates of acquisition to the date said winery was sold.

3. All of said business assets which are described as "Farming Properties, Etc." were used exclusively for business purposes from the dates of acquisition to December 31, 1943.

Error (b)—Allocation of consideration received on sale of wine, winery and equipment.

1. On or about December 6, 1943, petitioner's

husband as seller entered into an "Agreement of Sale" in which he agreed to sell and one John Dumbra agreed to buy "all that certain winery known as Lucca Winery located at Forestville, Sonoma County, California, together with two acres more or less of land on which said winery is located, all buildings now located thereon, all fixtures, equipment, supplies (other than wine), goodwill, trade names, formulas, and all other personal property of every kind and description now belonging to or a part of said Lucca Winery, for the total sum of \$273,000.00".

2. In a separate paragraph in said agreement of sale it was further understood and agreed that petitioner would sell and the said John Dumbra would buy "275,000 gallons of wine now in storage in said Lucca Winery at the total price of \$77,000.00".

3. Said agreement of sale was executed in accordance with its terms prior to December 31, 1943.

4. The consideration of \$77,000.00 paid for the 275,000 gallons of wine included in said agreement of sale was the maximum price at which said wine could be sold at the date of the agreement without violating the regulations of the Office of Price Administration covering the sale of bulk wines.

Error (c)—Tax basis of winery and equipment.

1. The adjusted basis for determining gain or loss from said sale of winery, land, buildings, fixtures, equipment, supplies (other than wine), goodwill, trade names, formulas, and all other personal property of every kind and description belonging

to or a part of said Lucca Winery was an amount not less than \$55,366.00.

Error (d)—Decrease in cost of grapes purchased.

1. During the calendar year 1943 petitioner's husband expended from community property funds the total amount of \$117,618.73 for the purchase of grapes.

2. All of said grapes were purchased and used by petitioner's husband in the production of wine for sale to customers in the ordinary course of his business.

Error (e)—Compensation paid Arthur Guerrazzi.

1. During the calendar year 1943, petitioner's husband paid one Arthur Guerrazzi from community property funds the amount of \$5,600.00 solely as compensation for services rendered in the conduct of the business conducted by petitioner's husband.

2. Said Arthur Guerrazzi was employed as a full-time salesman.

3. Said \$5,600.00 did not exceed the reasonable value of the services of the said Arthur Guerrazzi to the petitioner for the calendar year 1943.

Error (f) — Compensation paid Clotilde Guerrazzi:

1. During the calendar year 1943 petitioner's husband paid one Clotilde Guerrazzi from community property funds the amount of \$5,600.00 solely as compensation for services rendered in the conduct of his business.

2. Said Clotilde Guerrazzi was a full-time em-

ployee engaged in the operation of a retail liquor store located in Forestville, California; in bottling wine for sale; in keeping records; and in performing miscellaneous other activities connected with the business.

3. Said \$5,600.00 did not exceed the reasonable value of the services of the said Clotilde Guerrazzi to petitioner and her husband for the calendar year 1943.

Wherefore, the petitioner prays that this Court may hear the proceeding and determine that no deficiency in income and victory taxes is due from this petitioner for the calendar year 1943.

/s/ GEORGE E. OEFINGER, C.P.A.,

/s/ HARRISON H. SIMPSON, Esq.,

Counsel for Petitioner

State of California,
City and County of San Francisco—ss.

Arthur Guerrazzi, being duly sworn, says that the petitioner herein died on October 12, 1949; that affiant is named as executor of petitioner's estate in her last will and testament; that affiant intends to accept appointment as said executor but the formal appointment will not be made prior to October 19, 1949, the due date of this petition; that affiant will submit evidence of his appointment to the Court as soon as letters testamentary are issued; that affiant has read the foregoing petition and is familiar with the statements contained therein; and that to the

best of his knowledge and belief the statements contained in said petition are true.

/s/ ARTHUR GUERRAZZI,
as Executor of the Estate of Eletta Particelli, Deceased, 1350 Francisco St., San Francisco, California.

Subscribed and sworn to before me this 14th day of October, 1949.

[Seal] /s/ MARIAM L. ASHBY,
Notary Public in and for the City and County of San Francisco, State of California. My commission expires Jan. 10, 1953.

EXHIBIT A

Form 1279 (Rev. Mar. 1946)

SN-IT-7

Treasury Department, Internal Revenue Service
Office of Internal Revenue Agent in Charge,
San Francisco Division
IRA:90-D:DRU (C:TS:PD SF:WGW)

Mrs. Eletta Particelli July 21, 1949
1350 Francisco St., San Francisco, Calif.

Dear Mrs. Particelli:

You are advised that the determination of your income and victory tax liability for the taxable year ended December 31, 1943, discloses a deficiency of \$62,222.85, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington 25, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, San Francisco 5, California for the attention of Conference Section. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

GEO. J. SCHOENEMAN,
Commissioner,

/s/ By F. M. HARLESS,

Internal Revenue Agent in Charge
Enclosures: Statement, Form 1276, Form of Waiver
Exhibit A.

Statement

Tax liability for the Taxable Year ended December 31, 1943.

	Deficiency
Income and victory tax	\$62,222.85

In making this determination of your tax liability, careful consideration has been given to your protest filed August 31, 1948 and to the statements made at the conferences held on October 5, 1948 and May 27, 1949.

ADJUSTMENTS TO NET INCOME

Year 1942

Net income as disclosed by return (joint return).....	\$3,410.50
Nontaxable income and additional deductions:	
(a) Business income.....	519.95
	<hr/>
Net income as adjusted.....	\$2,890.55

Explanation of Adjustments

(a) You claimed no depreciation on your return for 1942. You now contend that the allowable depreciation for 1942 should be \$3,012.25, divisible equally with your spouse. The amount allowable as a deduction for depreciation for 1942 has been found to be \$1,720, divisible equally with your spouse. (Exhibit A attached hereto.)

[Printer's Note: Beginning with "Computation of Tax, Year 1942" on page 2 of Exhibit A the balance of this statement is duplicated at pages 14-19, inclusive, of this printed record.]

[Endorsed]: T.C.U.S. Oct. 17, 1949.

on October 12, 1949 as is evidence by the attached death certificate.

2. The said Arthur Guerrazzi executed said petition as Executor of the Estate of Eletta Particelli because he was named as such Executor in the last will and testament of the said Eletta Particelli.

3. The said Arthur Guerrazzi was duly appointed the Executor of said Estate by the Superior Court of the State of California in and for the City and County of San Francisco on November 15, 1949 as is evidenced by the attached certified copy of letters testamentary.

4. The act of the said Arthur Gerrazzi in executing said petition has been ratified and confirmed as the official act of said Arthur Guerrazzi as Executor of said Estate by the Superior Court of the State of California in and for the City and County of San Francisco by an order issued on November 15, 1949. A certified copy of said order is attached hereto.

Wherefore, it is prayed that this motion be granted.

/s/ GEORGE E. OEFINGER, C.P.A.,

/s/ HARRISON H. SIMPSON,

Counsel for Petitioner

Death Certificate and Order Ratifying Act of Executor attached.

T.C.U.S. Granted Nov. 23, 1949.

[Endorsed]: T.C.U.S. Filed Nov. 21, 1949.

[Title of Tax Court and Cause No. 25440.]

ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed by the above-named petitioner admits and denies as follows:

1. Denies the allegations contained in paragraph 1 of the petition.

2 to 4, inclusive. Admits the allegations contained in paragraphs 2 to 4, inclusive, of the petition.

5. (a) to (f), inclusive. Denies that the Commissioner erred in the determination of the deficiency as alleged in subparagraphs (a) to (f), inclusive, of paragraph 5 of the petition.

6. (a) 1, 2 and 3. Denies the allegations contained in subparagraphs (a) 1, 2 and 3 of paragraph 6 of the petition.

6. (b) 1. Admits the allegations contained in subparagraph (b) 1 of paragraph 6 of the petition, except denies that the selling price of the winery was \$273,000.00.

6. (b) 2. Admits the allegations contained in subparagraph (b) 2 of paragraph 6 of the petition, except denies that the selling price of the wine was \$77,000.00.

6. (b) 3 and 4. Denies the allegations contained in subparagraphs (b) 3 and 4 of paragraph 6 of the petition.

6. (c) 1. Denies the allegations contained in subparagraph (c) 1 of paragraph 6 of the petition.

6. (d) 1 and 2. Denies the allegations contained in subparagraphs (d) 1 and 2 of paragraph 6 of the petition.

6. (e) 1. Admits that during the calendar year 1943, petitioner paid one Arthur Guerrazzi the amount of \$5,600.00, but denies the remaining allegations contained in subparagraph (e) 1 of paragraph 6 of the petition.

6. (e) 2 and 3. Denies the allegations contained in subparagraphs (e) 2 and 3 of paragraph 6 of the petition.

6. (f) 1. Admits that during the calendar year 1943, petitioner paid one Clotilde Guerrazzi the amount of \$5,600.00, but denies the remaining allegations contained in subparagraph (f) 1 of paragraph 6 of the petition.

6. (f) 2 and 3. Denies the allegations contained in subparagraphs (f) 2 and 3 of paragraph 6 of the petition.

7. Denies generally and specifically each and every allegation in the petition not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and the petitioner's appeal denied.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal
Revenue

Of Counsel:

B. H. NEBLETT,

Division Counsel

T. M. MATHER,

LEONARD ALLEN MARCUSSEN,

Special Attorneys,

Bureau of Internal Revenue

[Endorsed]: T.C.U.S. Filed Dec. 6, 1949.

[Title of Tax Court and Cause No. 25440.]

MOTION FOR LEAVE TO AMEND PETITION

Comes now the petitioner, by its counsel George E. Oefinger, C.P.A., and Harrison H. Simpson, Esq., and respectfully

Moves The Tax Court for leave to file the attached amendment to the petition herein.

In support of this motion petitioner states:

Because of the death of petitioner's decedent after the preparation of the petition but before execution and filing the petitioner was erroneously described in said petition as an individual. By order of The Tax Court issued on October 26, 1949 the description and designation of the petitioner contained in the caption was amended to its present form. An amendment is required to conform the description and designation of the petitioner contained in the body of the petition with the true description and designation as set forth in the caption.

On page two of the petition the facts upon which the petitioner relies as the basis of the proceedings were listed under paragraph 6. As the immediately preceding paragraph was number 4 an amendment to make paragraph 6 read paragraph 5 is required in order to maintain the numerical sequence of the divisions of the petition.

Wherefore, this motion for leave to amend should be granted.

Dated: San Francisco, California, December 29, 1949.

Respectfully submitted,

/s/ GEORGE E. OEFINGER, C.P.A.,
/s/ HARRISON H. SIMPSON,
Counsel for Petitioner

T.C.U.S. Granted Jan. 3, 1950.

[Endorsed]: T.C.U.S. Filed Jan. 3, 1950.

[Title of Tax Court and Cause No. 25440.]

AMENDMENT TO PETITION

The petition heretofore filed in this proceeding is hereby amended in the following particulars:

(A) Paragraph 1 is amended to reads as follows:

“The petitioner is the Estate of Eletta Particelli, Arthur Guerrazzi, Executor whose address is 1350 Francisco Street, San Francisco, California.

(B) Paragraph 6 is amended to read paragraph 5.

Respectfully submitted,

/s/ GEORGE E. OEFINGER, C.P.A.,
/s/ HARRISON H. SIMPSON,
Counsel for Petitioner

[Endorsed]: T.C.U.S. Filed Jan. 3, 1950.

[Title of Tax Court and Cause No. 25440.]

ANSWER TO AMENDMENT TO PETITION
AND AMENDED ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the amendment to petition filed by the above-named petitioner and for an amended answer admits and denies as follows:

1. Admit the allegations contained in paragraph 1 of the petition as amended.

2 and 3. Admits the allegations contained in paragraphs 2 and 3 of the petition.

4. (a) to (f), inclusive. Denies the Commissioner erred in the determination of the deficiency as alleged in subparagraphs (a) to (f), inclusive, of paragraph 4 of the petition.

5. (a) 1, 2 and 3. Denies the allegations contained in subparagraphs (a) 1, 2 and 3 of paragraph 5 of the petition.

5. (b) 1. Admits the allegations contained in sub-

paragraph (b) 1 of paragraph 5 of the petition, except denies that the selling price of the winery was \$273,000.00.

5. (b) 2. Admits the allegations contained in subparagraph (b) 2 of paragraph 5 of the petition, except denies that the selling price of the wine was \$77,000.00.

5. (b) 3 and 4. Denies the allegations contained in subparagraphs (b) 3 and 4 of paragraph 5 of the petition.

5. (c) 1. Denies the allegations contained in subparagraph (c) 1 of paragraph 5 of the petition.

5. (d) 1 and 2. Denies the allegations contained in subparagraphs (d) 1 and 2 of paragraph 5 of the petition.

5. (e) 1. Admits that during the calendar year 1943, petitioner paid one Arthur Guerrazzi the amount of \$5,600.00, but denies the remaining allegations contained in subparagraph (e) 1 of paragraph 5 of the petition.

5. (e) 2 and 3. Denies the allegations contained in subparagraphs (e) 2 and 3 of paragraph 5 of the petition.

5. (f) 1. Admits that during the calendar year 1943, petitioner paid one Clotilde Guerrazzi the amount of \$5,600.00, but denies the remaining allegations contained in subparagraph (f) 1 of paragraph 5 of the petition.

5. (f) 2 and 3. Denies the allegations contained in subparagraphs (f) 2 and 3 of paragraph 5 of the petition.

6. Denies generally and specifically each and

every allegation in the petition not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and the petitioner's appeal denied.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal
Revenue

Of Counsel:

B. H. NEBLETT,
Division Counsel
T. M. MAHER,
LEONARD ALLEN MARCUSSEN,
Special Attorneys,
Bureau of Internal Revenue.

[Endorsed]: T.C.U.S. Filed Feb. 1, 1950.

The Tax Court of the United States

[Title of Causes Nos. 25439, 25440.]

MINUTES OF PROCEEDINGS

Date: May 17, 18, 19, 1950. Place: San Francisco, Calif.

Assigned to Judge Hill, Division No. 2.

Counsel: For Petitioner, Valentine Brookes, Esq., 1720 Mills Tower, San Francisco, Calif. For Respondent: Leonard Allen Marcussen, Esq.

On the merits Yes. On motion of counsel to keep record open to receive stipulation and depositions

to be filed not later than July 15, 1950.

Ordered Granted; Proceeding to be kept open until July 15, 1950, for receipt of stipulation and depositions.

Filed at hearing: Stipulation of Facts; Entry of Appearance of Valentine Brookes, Esq.

Petitioner's brief: After filing of Depositions, 60 days; Reply, 25 days.

Respondent's brief: 45 days.

Petitioner's Exhibits: No. 10, Copy of telegram; No. 11, Analysis MFI.

Respondent's Exhibits: J, Tabulation; K, Statement; L, Letter; M, Letter; N, Letter; O, File MFI; P, Statement; Q, file folders MFI; R, Book and papers MFI; S, Income tax return; T, File folder and contents (18 sheets); U, Contract; V, Letter; W, Transcript of pet. day book; X, Income tax return; Y, Income tax return; Z, three letters.

/s/ MAUDE R. CARPENTER,
Acting Deputy Clerk

[Title of Tax Court and Causes Nos. 25439, 25440.]

STIPULATION OF FACTS

The parties to these proceedings, through their attorneys, hereby stipulate that the following facts exist and may be accepted by the Court as true to the same extent as if established by competent evidence, saving to the parties the right to introduce additional evidence not inconsistent herewith and to contend on brief that the stipulated facts are

irrelevant to the issues herein. This stipulation may be introduced in either proceeding above identified, or in both, or if the proceedings are consolidated for trial, in such consolidated proceeding.

1. Exhibit A-1 attached hereto is a true copy of a document entitled "Agreement of Sale" which was signed on December 6, 1943 by G. Particelli as Seller and John Dumbra as Buyer.

2. Attached hereto are Exhibits B-2 and C-3 which are true copies of two letters from Tiara Products Company, Inc., to Bank of Sonoma County, dated December 21, 1943. These letters were delivered to the Bank by A. M. Mull, Jr., attorney for Tiara Products Company, Inc. At the same time, there was delivered by Mr. Mull to the Bank two checks drawn by Tiara Products Company, Inc., in favor of the Bank, in the respective amounts of \$330,000 and \$15,000, both dated December 21, 1943.

3. Attached hereto as Exhibit D-4 is a true copy of a letter dated December 28, 1943, to the Bank of Sonoma County, which was delivered to the Bank on December 28, 1943 in substitution for Exhibit C-3, which was then withdrawn.

4. Attached hereto as Exhibits E-5 and F-6 are letters addressed to the Bank of Sonoma County by petitioner G. Particelli and Eletta Particelli, and which were received by the Bank on December 21, 1943.

5. Attached hereto as Exhibits G-7, H-8 and I-9 are true copies of bills of sale and a grant deed by G. Particelli and Eletta Particelli to Tiara Products Co., Inc.

6. Tiara Products Company, Inc., was the undisclosed principal of the John Dumbra who signed the document entitled "Agreement of Sale." The G. Particelli referred to in the aforesaid exhibits is Giulio Particelli, petitioner in Docket No. 25439. The late Eletta Particelli, deceased, was the wife of Giulio Particelli throughout 1943, and all property sold was community property of the spouses acquired subsequent to July 29, 1927.

/s/ CHARLES OLIPHANT,
Counsel for Commissioner
/s/ VALENTINE BROOKES
/s/ ARTHUR H. KENT,
/s/ GEORGE E. OEFINGER,
Counsel for Petitioner

EXHIBIT A-1

Agreement of Sale

Receipt of the sum of \$5,000.00 to apply on the total purchase price of \$350,000.00 is hereby acknowledged this sixth day of December, 1943, by the undersigned, G. Particelli, for the following purposes:

It is hereby understood and agreed that the said G. Particelli will sell to John Dumbra, and the said John Dumbra agrees to buy, all that certain winery known as Lucca Winery located at Forestville, Sonoma County, California, together with two acres more or less of land on which said winery is located, all buildings now located thereon, all fixtures, equipment, supplies (other than wine), goodwill,

trade names, formulas, and all other personal property of every kind and description now belonging to or a part of said Lucca Winery, for the total sum of \$273,000.00.

It is further understood and agreed that the said G. Particelli will sell to John Dumbra, and the said John Dumbra agrees to buy, 275,000 gallons of wine now in storage in said Lucca Winery at the total price of \$77,000.00.

It is further understood and agreed that the balance of said total purchase price for both the said winery and wine, amounting to \$345,000.00, will be paid on or before December 21, 1943, at which time said G. Particelli agrees to furnish clear title to said real and personal property.

It is understood by both parties hereto that the so-called "bottling plant" now owned by the said G. Particelli is not a part of this agreement.

Signed this sixth day of December, 1943.

.....
Seller

.....
Buyer

EXHIBIT B-2

Sebastopol, California

Bank of Sonoma County
Sebastopol, California

Dec. 21, 1943

Gentlemen:

We are enclosing herewith our check for \$77,000.00 which you are to deliver to G. Particelli when

he has delivered to you a Bill of Sale to 256,000 gallons of dry table wine located at the Lucca Winery, Forestville, California, and 19,000 gallons of dry table wine located in the Scatena Bros. Winery, Healdsburg, California, and when you have recorded the above Bill of Sale and obtained from the Sonoma Title Guaranty Co. a title report, indicating the wine to be in the name of Tiara Products Co., Inc., free and clear of all encumbrance.

Yours very truly,

TIARA PRODUCTS CO., INC.,

/s/ By A. M. MULL, JR.,

Its Attorney

The Bank of Sonoma County hereby acknowledges receipt of the above sum of \$77,000.00.

BANK OF SONOMA COUNTY,

/s/ By H. L. HOTLE, President

EXHIBIT C-3

Copy Sebastopol, California
Bank of Sonoma County Dec. 21, 1943
Sebastopol, California

Gentlemen:

We are enclosing herewith the sum of \$268,000.00, which represents the purchase of the Lucca Winery and the purchase of all the equipment and personal property now contained therein.

You are authorized to deliver the above sum to Mr. G. Particelli when you have recorded a Bill of Sale and Grant Deed from G. Particelli et ux to

Tiara Products Co., Inc., and have obtained a title insurance policy in the sum of \$100,000.00, showing the property in the name of the Tiara Products Co., Inc., a corporation, free and clear of all encumbrance, with the exception of the second installment of 1943-44 taxes, and a title report showing the personal property in the name of the Tiara Products Co. free and clear of all encumbrance.

The title insurance premium is to be paid equally by the purchaser and the seller; the recording charges and the escrow fee in the sum of \$25.00 are to be paid for by the purchaser. Taxes are to be prorated as of December 31, 1943.

All fire insurance policies are to be cancelled unless we have advised you to the contrary before you have closed the transaction.

Yours very truly,

TIARA PRODUCTS CO., INC.,
/s/ By A. M. MULL, JR.,
Its Attorney

The Bank of Sonoma County hereby acknowledges receipt of the above sum of \$268,000.00.

BANK OF SONOMA COUNTY
/s/ By H. L. HOTLE, President

EXHIBIT D-4

Bank of Sonoma County
Sebastopol, California

Copy
12/28/43

Gentlemen:

We are enclosing herewith the sum of \$268,000

which represents the balance of the purchase price of the Lucca Winery, Forestville, California, and the purchase price of all of the equipment and the personal property now contained therein, other than the stock of wine.

You are authorized to deliver the sum of \$268,000 immediately to Mr. G. Particelli when you have in your possession a bill of sale and grant deed from Mr. G. Particelli and wife to Tiara Products Company, Inc., and when you have released of record the deed of trust dated October, 1943, in the sum of \$47,500, from Particelli to the Bank of Sonoma County, and a deed of trust dated November 4, 1943, in the sum of \$22,500, Particelli to the Sebastopol National Securities Company, together with chattel mortgage dated November 4, 1943, and recorded in volume 593, page 267, Sonoma County Records, and chattel mortgage dated November 4, 1943, and recorded November 8, 1943, in volume 595, page 253, Official Records.

We have checked the bill of sale and grant deed which you have in your possession and upon which we have indicated our approval. You are directed to deliver to us the grant deed and bill of sale unrecorded referred to above at the time of advice from Mr. Particelli of issuance to us by the Internal Revenue Service of Wine Producer's and Blender's Basic Permit at the location of Lucca Winery, and in any event not later than March 1, 1944.

You are not to be responsible in any way for the validity of the above instruments or the condition of the title to the property herein referred to. Your

entire responsibility shall end upon the delivery of the above instruments to us.

Yours very truly,

TIARA PRODUCTS COMPANY, INC.

/s/ By A. M. MULL, JR., Its Attorney

These instructions supercede and replace all of our former escrow instructions relating to the Particelli sale.

TIARA PRODUCTS COMPANY, INC.

/s/ By A. M. MULL, JR., Its Attorney

Receipt is hereby acknowledged of the above instructions. Dec. 28, 1942.

BANK OF SONOMA COUNTY

/s/ By H. L. HOTLE, President

EXHIBIT E-5

Copy
Bank of Sonoma County
Sebastopol, California

Sebastopol, California
Dec. 21, 1943

Gentlemen:

We are enclosing herewith Grant Deed, G. Particelli and Eletta Particelli, conveying the Lucca Winery to the Tiara Products Co., Inc., together with Bill of Sale to all of the equipment now located in said winery.

You are to deliver these instruments to the above purchaser after the payment for our account of the sum of \$268,000.00 and issuance to such purchaser

of Wine Producers and Blenders Basic Permit at Lucca Winery premises.

With reference to the winery bond and fire insurance, the cancellation or proration of insurance premium is at the option of the purchaser.

The taxes are to be pro rated as of December 31, 1943.

You are authorized to place on the above Deed revenue stamps in the sum of \$110.00.

Yours very truly,

/s/ G. PARTICELLI

/s/ ELETTA PARTICELLI

EXHIBIT F-6

Sebastopol, California

Bank of Sonoma County

Dec. 21, 1943

Sebastopol, California

Gentlemen:

We are enclosing herewith a Bill of Sale of bulk wine from G. Particelli and Eletta Particelli to the Tiara Products Co., Inc., a corporation.

You are to deliver this Bill of Sale upon the payment for our account of the sum of \$77,000.00, which represents a sale of 275,000 gallons of wine at our ceiling price of 28c per gallon.

Yours very truly,

/s/ G. PARTICELLI,

/s/ ELETTA PARTICELLI

EXHIBIT G-7

Copy

Bill of Sale

Know All Men By These Presents:

That We, G. Particelli and Eletta Particelli, his wife, Parties of the first part, in consideration of the sum of Ten Dollars (\$10.00), current lawful money of the United States of America, to us in hand paid by Tiara Products Company, Inc., a corporation, Party of the second part, and other valuable consideration, the receipt whereof is hereby acknowledged, do by these presents sell and convey unto the Party of the Second Part and its assigns all of the machinery, fixtures, furniture, equipment and all other personal property and contents, excepting wine, now a part of and contained in that certain winery known as Lucca Winery located at Forestville, County of Sonoma, State of California, together with all of our rights in the name of Lucca Winery and any other trade names, including "Sonoma Wine", and the good will of said winery. Said personal property is more specifically described as follows:

Miscellaneous supplies

3 Wine Pumps

1 Crusher (grape)

2 Hydraulic Presses—Complete

1 Steam Boiler

400 feet wine hose

1 filter (500 gal. per hour cap.)

1 platform scale

1 Truck scale

4 Conveyors (pomice)

Formulas

Miscellaneous hand tools and all other personal property now located on said premises known as Lucca Winery.

To Have and to Hold the same unto the Party of the second part, and assigns, forever.

And We do for our heirs, executors and administrators, covenant and agree, with the Party of the Second Part, and its assigns, to warrant and defend the sale of the said property, goods, and chattels unto the Party of the Second Part, and its assigns, against all and every person and persons whomsoever lawfully claiming or to claim the same.

In Witness Whereof We have hereunto set our hands this 21st day of December, 1943.

/s/ G. PARTICELLI

/s/ ELETTA PARTICELLI

Parties of the First Part

EXHIBIT H-8

Copy

Bill of Sale of Bulk Wine

Know All Men By These Presents:

That We, G. Particelli and Eletta Particelli, his wife, Parties of the First Part, in consideration of the sum of Ten Dollars (\$10.00) current lawful money of the United States of America, to us in hand paid by Tiara Products Company, Inc., a cor-

poration, Party of the Second Part, and other valuable consideration, the receipt whereof is hereby acknowledged, do by these presents sell and convey unto the Party of the Second Part, and its assigns, the following bulk wine:

Two Hundred and Fifty-Six Thousand (256,000) gallons of dry table wine, now located in that certain winery known as Lucca Winery, Forestville, County of Sonoma, State of California; and

Nineteen Thousand (19,000) gallons of dry table wine, now located in that certain winery known as Scatena Bros. Winery, Healdsburg, County of Sonoma, State of California.

To Have and to Hold the same unto the Party of the Second Part and its assigns, forever.

And we do for our heirs, executors and administrators, covenant and agree with the Party of the Second Part, and its assigns, to warrant and defend the sale of the said property, goods, and chattels unto the Party of the Second Part, and its assigns, against all and every person and persons whomsoever lawfully claiming or to claim the same.

In Witness Whereof We have hereunto set our hands this 21st day of December, 1943.

/s/ G. PARTICELLI

/s/ ELETTA PARTICELLI

Parties of the First Part

EXHIBIT I-9

Copy

GRANT DEED

For Value Received, G. Particelli and Eletta Particelli, husband and wife, Grant to Tiara Products Company, Inc., a corporation, all that real property situate in the County of Sonoma, State of California, bounded and more particularly described as follows, to-wit:

Parcel One: Beginning at the point of intersection of the Westerly line of First Street as said Street is shown on the map of G. W. Winter's Addition to the Town of Forestville, filed in the office of the County Recorder of said County of Sonoma, February 6, 1904, with the Northerly line of the land of the Petaluma and Santa Rosa Railroad Co., said Northerly line being the South boundary, or its prolongation, of a street shown on said map; thence South $0^{\circ} 05'$ West along the Southerly prolongation of said line of First Street 36.64 feet to a point distant 10 feet Northerly at right angles from the center line of main track of the Petaluma and Santa Rosa Railroad Co.; thence Southwesterly concentric with said center line along a curve to the left of a radius of 337.72 feet (the chord of which bears South $44^{\circ} 27'$ West 359.02 feet) a distance of 378.51 feet to the Southeasterly line of the parcel of land described in the Deed from George W. Winter and Elizabeth Winter to Burke Corbet, dated April 4, 1905, and recorded August 7, 1905, in Liber 221 of Deeds, at page 87, Sonoma County Records; thence

South $70^{\circ} 10'$ West along said Southeasterly line 52.25 feet; thence North $6^{\circ} 11'$ West 161.65 feet; thence North $0^{\circ} 05'$ East 149.97 feet to said North line of the land of the Petaluma and Santa Rosa Railroad Co.; thence East thereon 317.80 feet to the point of beginning, containing 1.09 acres, more or less.

Parcel Two: Commencing at the point of intersection of the Westerly line of First Street as said Street is shown on the map of G. W. Winter's Addition to the Town of Forestville, filed in the office of the County Recorder of said County of Sonoma, February 6, 1904, with the Northerly line of the land of the Petaluma and Santa Rosa R.R. Co. said Northerly line being the South boundary, or its prolongation, of a street shown on said map; thence South $0^{\circ} 05'$ West along the Southerly prolongation of said line of First Street, 36.64 feet thence South $44^{\circ} 27'$ West 359.02 feet to the Southeasterly line of the parcel of land described in the Deed from George W. Winter and Elizabeth Winter to Burke Corbet, dated August 4, 1905, and recorded August 7, 1905, in Liber 221 of Deeds, at page 87, Sonoma County Records; thence North $70^{\circ} 10'$ East along said Southeasterly line 40.40 feet to the point of beginning of the parcel of land to be described; thence North $70^{\circ} 10'$ East along said Southeasterly line 151.15 feet to the Westerly line of the parcel of land described in the Deed from the Petaluma and Santa Rosa Railroad Co., to the Miller Fruit Co., Inc., dated January 22, 1934; thence North $1^{\circ} 26'$ East along said Westerly line 134.20 feet; thence South $38^{\circ} 07' 31''$ West 235.74 feet to the point of

beginning, containing 0.22 of an acre, more or less.

Witness our hands this 21st day of December, 1943.

/s/ G. PARTICELLI

/s/ ELETTA PARTICELLI

[Endorsed]: T.C.U.S. Filed May 17, 1950.

[Title of Tax Court and Causes Nos. 25439, 25440.]

STIPULATION OF FACTS, II.

The parties hereto, through their counsel, hereby stipulate that the following facts are true and may be considered a part of the record of this case:

1. The 275,000 gallons of wine purchased by Tiara Products Company, Inc. from G. Particelli and Eletta Particelli were entered on the books of account of Tiara Products Company, Inc. at a cost price of \$77,000. This same cost figure was used for the wine in the closing inventory for 1943 and the opening inventory for 1944, as reflected in the federal income and excess profits tax returns of Tiara Products Company, Inc. for 1943 and 1944.

2. The Lucca Winery was entered on the books of account of Tiara Products Company, Inc. at a cost price of \$273,000, and this figure was used as the cost of the winery in the federal income and excess profits tax returns filed by Tiara Products Company, Inc.

3. The entries of \$77,000 and \$273,000, respectively, were made in the books of account of Tiara Products Company, Inc. by a bookkeeper under the supervision of Mr. Joe Brown, the corporation's

independent accountant. The figures of \$77,000 and \$273,000 were obtained by Mr. Brown from the documents constituting Exhibits A-1 to H-8, inclusive.

4. Mr. Brown was the tax adviser of Tiara Products Company, Inc. He was not consulted by Mr. John Dumbra or by anyone on behalf of Tiara Products Company, Inc. prior to the purchase by the latter of the wine and winery from G. Particelli and Eletta Particelli, about any aspect or consequence of the purchase. In 1944 he advised Tiara Products Company, Inc. that there would be a tax advantage to it in selling the winery in that year.

/s/ VALENTINE BROOKES,

/s/ ARTHUR H. KENT,

/s/ GEORGE E. OEFINGER,

Counsel for Petitioner

/s/ CHARLES OLIPHANT,

Chief Counsel, Bureau of Internal

Revenue, Counsel for Respondent

[Endorsed]: T.C.U.S. Filed July 17, 1950.

[Title of Tax Court and Cause.]

Docket Nos. 25439, 25440

In December 1943 there was a ceiling price on bulk sales of wine but no regulation fixing a maximum price on sales of a winery with its inventory of wine. Petitioner sold his inventory of wine and winery for \$350,000 without an agreement on the consideration for each class of property. The writ-

ten contract of sale specified an amount as the selling price of the wine and of the winery. Held, that the substance of the transaction was a sale of the wine and the winery for a lump sum and that of the total consideration, \$275,000 was paid for the wine and \$75,000 for the winery.

Valentine Brookes, Esq., for the petitioners.

Leonard Allen Marcussen, Esq., for the respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

These proceedings were consolidated for hearing. Each case involves a deficiency in income tax for the year 1943 in the amount of \$62,222.85 arising from community income. Issues settled by stipulation will be reflected in the computation under Rule 50. The only remaining issue, which is common to both proceedings, is whether respondent erred in his allocation of community income derived from the sale of an inventory of wine and a winery. The returns of the petitioners were filed with the collector at San Francisco, California.

Findings of Fact

The facts stipulated by the parties are found as agreed to by them.

Petitioner Giulio Particelli, a resident of Sebastopol, California, and the decedent in Docket No. 25440 were at all times material husband and wife. Giulio Particelli, whose transactions gave rise to

the question in issue, will be referred to for convenience as the petitioner.

Petitioner was born in 1891 and migrated to this country from Italy. He speaks and understands but can not read English. His spoken English is a somewhat broken dialect and is difficult for those not accustomed to it to understand.

Petitioner commenced the production of wine on a small scale on his farm shortly after the repeal of prohibition. In 1941 he commenced and, prior to the grape crush in 1943, fully completed the construction of a larger winery at Forestville, California, known as the Lucca Winery. The winery was equipped to crush grapes, to ferment the juice into wine, to rack and filter wine and store 256,000 gallons. The winery was not equipped to finish wine beyond the aging, racking and filtering stages. Petitioner's equipment for bottling wine was located in his retail store, which was located about 300 feet from the winery.

Prior to October 22, 1943, the Office of Price Administration, hereinafter referred to as "OPA", had a ceiling on bulk dry wine of 21½ cents a gallon, plus an amount not in excess of about 6 cents a gallon, computed on the basis of cost of grapes in 1942 over 1941, not exceeding \$28.20 a ton. Effective October 22, 1943, the OPA placed a flat ceiling of 28 cents a gallon and 33 cents a gallon on bulk current red and white wines, respectively. At the same time it set flat ceilings for bottled wines.

Petitioner sold wine of his own production and of established winemakers. His wine was not fin-

ished and was the poorest and cheapest of the grades which he sold. His own wine would cloud and he could not sell it in bottles. He sold his own wine only in bulk in lots of 5, 10, 15, 25 or 50 gallons, or in carload lots when blended with finished wines. He generally sold the other wines in one-fifth, half-gallon and gallon bottles.

Most of the wine sold by petitioner in 1943, prior to November of that year, had been purchased from other producers. The various types and classes of the wine were sold for from 45 cents to \$1.40 a gallon. He sold his own production of wine for 32 cents a gallon in 50-gallon lots, 33 to 35 cents in 25-gallon lots, and 38 cents a gallon in 5-gallon lots. All of the prices included Federal and state alcoholic beverage taxes, which in 1943 totaled 11 cents a gallon.

During the same period petitioner made one sale of about 60,000 gallons of wine in carload lots to a winery located in Ohio. The wine so sold was a blend in the ratio of ten parts of his production in 1942 to one part of some finished wine which he had purchased from another winery. The OPA ceiling price for the wine was about 27½ cents a gallon. The proceeds of the sale were \$51,800.95.

Petitioner's crush of wine in 1943, consisting of about 245,000 gallons, was started in September and was completed in November. At that time he had about 30,000 gallons of wine on hand from his crush of about 100,000 gallons in 1942. The cost of the wine produced by petitioner in 1943 was from 50 cents to 52 cents a gallon. At that time he and other

wine producers expected that the OPA would increase the ceiling price of wine sold in bulk.

A blend of finished wine with unfinished wine will not produce finished wine. The winery which on two occasions had finished some wine for petitioner refused to do so again. Unless he could have his wine finished or blend it with finished wine petitioner could not sell his wine as case goods, because it would cloud and spoil, but he could sell it in bulk. In December 1943 petitioner's prior sources of supply for finished wine in bulk for blending purposes refused to sell him finished wine except as case goods, the price of which made the cost too high to use for blending.

Petitioner, since 1934, had had a line of credit from the Bank of Sonoma County or its predecessor on a secured and unsecured basis. On December 1, 1943, petitioner owed the bank \$70,000 secured by all of his assets.

Orders issued by the Federal government to control the disposition of grapes created a scarcity of grapes in 1942 and 1943 available for producing wine and intensified the extremely high demand for wine in those years. During 1942 and 1943 the price of grapes was not subjected to regulation by public authority. In 1942 wineries paid an average of \$30 a ton for grapes and in 1943 an average of \$79. The normal crush of dry wine from a ton of grapes is about 160 gallons. Prior to 1942 about 80 per cent of all the wine produced in California was sold in bulk. Thereafter, there was a trend toward sales of wine in bottles, and by October or November

1943 bulk sales of unfinished wine had practically ceased. By the end of 1943 bulk sales of unfinished wine at the prevailing ceiling prices had ceased entirely. The cost of grapes in 1943 prevented wine producers from making a profit on bulk sales of unfinished wine at the ceiling price. There was no active market for wineries in 1943 without an inventory of wine. During that year, to obtain wine, bottlers were compelled to buy the winery in order to obtain the owner's inventory of wine.

During 1943 three methods were used by operators of wineries to legally dispose of their inventory of unfinished wine at prices in excess of OPA ceilings on bulk sales. One of the methods, known as contract or franchise bottling, which was commenced about October 1943, consisted of shipping the wine to a bottler to be bottled for the account of the winery, and then selling the bottled wine to the bottler. That method enabled the wine producer to obtain from 75 cents to \$1.25 a gallon for his wine, depending upon its quality. Another plan, adopted in 1942, consisted of a sale by the wine producer of his inventory of wine and winery in one transaction for a lump sum price. The other method was one in which a bottler acquired the production of a winery by advancing funds for grapes to be crushed for the account of the bottler. The OPA issued a ruling in the fall of 1943 in response to a request of the Wine Institute, a trade and service organization for the wine industry of California, which constitutes about 90 per cent of the wine industry of the United States, that it would not inter-

ferre with the contract or franchise bottling method. During 1942, 1943 and 1944, 50 to 60 wineries in California, which constituted more than one-half of the production capacity of wineries in California, were purchased in order to obtain their inventories of wine. Of the 50 to 60 wineries so sold during the period of 3 years, 20 or 25 were sold in 1943. In 1943 bottlers of wine searched sources of supply for wine and a producer was not required to exert any effort to sell his wine.

In December 1943 John Dumbra, hereinafter referred to as Dumbra, was in California for the purpose of locating wine for purchase by his employer, the Tiara Products Co., general wine merchants, hereinafter referred to as Tiara, with its principal office in New York City. Dumbra first discussed the purchase of wine from petitioner in Santa Rosa, California, the evening of December 4, 1943. After tasting the wine at the Lucca Winery the next day and finding it satisfactory, Dumbra offered to purchase three or four cars of the wine at petitioner's price. Petitioner's ceiling price for the wine was not discussed. Petitioner's reply to the offer was that he could not make a profit on sales of his wine in such quantities and as he wished to get out of the winery business, the only transaction he would consider would be one for the purchase of all of his wine and the winery. Further discussions resulted in an offer of petitioner to sell his inventory of wine and the winery for \$350,000. Dumbra made a counter offer of \$330,000, subject to approval of his principal. Later the same day Dumbra consulted his

brother, Victor Dumbra, president and general manager of Tiara, who authorized him to buy the wine and winery, paying, if necessary, the asking price of petitioner. Tiara did not want the winery but was willing to acquire it, if necessary, to obtain the wine at an overall price it could afford to pay. Petitioner would not accept less than \$350,000 for the winery and his inventory of wine and Tiara accepted petitioner's offer to sell at that price. Petitioner informed Dumbra that "he was going to draw up the whole thing together," specifying one price for the wine and another for the winery and that "the price would be \$350,000", to which Dumbra had no objection, provided the price did not exceed \$350,000 and the quantity of wine was correct. Dumbra did not at any time agree to purchase the wine for \$77,000 and the winery for \$273,000. Tiara was compelled to purchase the winery to obtain the wine. While Dumbra at times felt that he was not understanding petitioner correctly, all of his doubts in that regard were eliminated before the negotiations were completed.

Dumbra and petitioner met in the office of petitioner's accountant in San Francisco on December 6, 1943. While there petitioner requested his accountant to compute the ceiling price on sales of bulk wine, which he did, and determined a price of not in excess of 28 cents a gallon, and so advised petitioner. Thereafter, on the same day, petitioner and Dumbra, acting for Tiara, executed an instrument reading in part as follows:

Agreement of Sale

Receipt of the sum of \$5,000.00 to apply on the total purchase price of \$350,000.00 is hereby acknowledged this sixth day of December, 1943, by the undersigned, G. Particelli, for the following purposes:

It is hereby understood and agreed that the said G. Particelli will sell to John Dumbra, and the said John Dumbra agrees to buy, all that certain winery known as Lucca Winery located at Forestville, Sonoma County, California, together with two acres more or less of land on which said winery is located, all buildings now located thereon, all fixtures, equipment, supplies (other than wine), goodwill, trade names, formulas, and all other personal property of every kind and description now belonging to or a part of said Lucca Winery, for the total sum of \$273,000.00.

It is further understood and agreed that the said G. Particelli will sell to John Dumbra, and the said John Dumbra agrees to buy, 275,000 gallons of wine now in storage in said Lucca Winery at the total price of \$77,000.00.

It is further understood and agreed that the balance of said total purchase price for both the said winery and wine, amounting to \$345,000.00, will be paid on or before December 21, 1943, at which time said G. Particelli agrees to furnish clear title to said real and personal property.

* * * * *

The agreement was drafted by petitioner's attorney

in accordance with instructions given to him by petitioner.

The Bank of Sonoma County acted as escrow agent for the parties in completing the transaction. On December 21, 1943, Tiara's attorney signed on behalf of Tiara, and delivered two letters of instructions to the escrow agent. One of the letters recited that Tiara was transmitting its check for \$77,000 for delivery to petitioner upon the delivery of a bill of sale for 256,000 gallons of dry table wine located at Lucca Winery and 19,000 gallons of like wine located in the Scatena Bros. Winery, Healdsburg, California. The other letter recited that there was transmitted therewith Tiara's check of \$268,000 for delivery to petitioner upon receipt of a deed and bill of sale for all of the property in the Lucca Winery other than the wine. Petitioner directed the escrow agent in writing to deliver his bill of sale for the wine on payment of the amount of \$77,000 "which represents a sale of 275,000 gallons of wine at our ceiling price of 28c per gallon." Other instructions of petitioner to the escrow agent were to deliver the deed and bill of sale covering the winery to Tiara upon receipt of the amount of \$268,000 and authorized it to place revenue stamps of \$110 on the deed. The revenue stamps were based upon a valuation of \$100,000 for the real estate conveyed. The amounts of the checks actually delivered to the escrow agent with the letters were \$330,000 and \$15,000. Delivery of the deed and bill of sale for the winery was to be made not later than March 1, 1944, but was not actually made until May 1, 1944, on account of delay

in obtaining a license in the name of the buyer. The proceeds of the checks totaling \$345,000 were credited to the bank account of petitioner on December 31, 1943.

The wine and winery were entered on the books of Tiara at cost prices of \$77,000 and \$273,000, respectively. The amounts were used as cost in income and excess profits tax returns of Tiara. The entries were made by a bookkeeper under the supervision of Tiara's independent accountant, who obtained the figures entered in the books from the letters of instruction of the petitioner and Tiara to the escrow agent and the sales contract. The accountant was the tax adviser of Tiara but was not consulted by anyone on behalf of Tiara prior to the purchase about any aspect or consequences of the purchase. The figure of \$77,000 was entered in the books as the cost of the wine because that amount was set up in the contract of sale as the selling price. Victor Dumbra did not learn of the entry for the wine until some undisclosed time after it was made.

Tiara did not in 1943 endeavor to purchase or purchase a winery without wine. It considered that it was paying from \$1 to \$1.12 per gallon for the wine acquired from petitioner, which was a price it could afford to pay in view of the prevailing high ceiling prices for wine in bottles, and the remainder for the winery. Tiara purchased the winery in order to obtain the wine. Tiara could make a net profit of about \$2 a gallon on bottled wine, less the cost of the wine itself.

There was no active market in 1943 and 1944 for

wineries without an inventory of wine to sell with it. A few months after acquiring title to the Lucca Winery, Tiara offered the property for sale at the price of \$60,000 but would have accepted an offer of \$55,000 or \$50,000. It refused offers of \$40,000 and \$45,000. There was a break in the market for wineries producing dry wines and the winery was sold in December 1944 for \$20,000. Tiara's accountant advised it in 1944 that there would be a tax advantage to it in selling the winery in that year.

Tiara purchased wineries, other than the Lucca Winery, with their inventories of wine. One of such purchases was made in California in December 1943. At the time of their acquisition Tiara understood that regulations of the OPA permitted it to sell the wine so acquired at its ceiling prices for bulk and case goods. During the latter part of 1944 it learned that such ceiling prices applied only on deliveries of wine to customers from its own facilities and if it made deliveries to the customer from the winery which produced the wine, the applicable ceiling price was the ceiling of the winery which had been purchased. From 40 per cent to 50 per cent of the wine acquired by Tiara from petitioner was sold direct to customers from the Lucca Winery.

Petitioner was employed by Tiara in December 1943 at a salary of \$100 per week to take care of the Lucca Winery. Before the sale involved herein was closed petitioner, with the consent of Tiara, withdrew 1,000 gallons of the wine for his personal use. In May 1944 when the contract of employment was terminated and Tiara owed petitioner \$1,500 for his

services, petitioner allowed Tiara a credit of \$1,000 for the wine withdrawn by him.

Of the total consideration of \$350,000 involved in the transaction, \$275,000 was paid for the wine and \$75,000 for the winery.

In their returns for 1943 petitioners reported that the sale to Tiara on December 6, 1943, constituted a sale of wine for \$77,000 and the winery for \$273,000. Capital gain on the sale of the winery was computed on a cost basis of \$61,165, less \$5,799 for depreciation. In his determination of the deficiencies, respondent allocated \$302,500 of the total selling price to the sale of wine and \$47,500 to the winery and decreased the adjusted cost basis of the winery to \$26,420.

Opinion

Hill, Judge: The gist of the contention of petitioners is that the parties entered into an arm's length transaction for the sale of the wine for \$77,000 and the winery for \$273,000, which agreement they embodied in the contract of sale and that the contract, therefore, not being a sham, the respondent has no power to disregard it. Respondent argues that the substance of the transaction was a sale of the two classes of property for \$350,000 without any agreement on the purchase price of each and that under the circumstances his allocation on the basis of fair market value was proper. If there was an arm's length sale of the wine and the winery at fixed prices, as alleged by petitioners, no allocation would be necessary. *Thomas J. McCoy*, 15 T.C.828.

Whether there were separate sales as contended

by petitioner or one for a lump sum, as respondent alleges, is a question of fact to be determined from a consideration of all of the evidence. The instrument signed by the parties on December 6, 1943, is not controlling if the form thereof differs from the substance of the transaction. To arrive at the substance of the sale, all relevant facts of the transaction must be taken into account and considered as a whole. In *Commissioner vs. Court Holding Co.*, 324 U. S. 331, the Court, in considering a question of whether a sale was in substance made by a corporation or its stockholders, said:

* * * The incidence of taxation depends upon the substance of a transaction. The tax consequences which arise from gains from a sale of property are not finally to be determined solely by the means employed to transfer legal title. Rather, the transaction must be viewed as a whole, and each step, from the commencement of negotiations to the consummation of the sale, is relevant. A sale by one person cannot be transformed for tax purposes into a sale by another by using the latter as a conduit through which to pass title. To permit the true nature of a transaction to be disguised by mere formalisms, which exist solely to alter tax liabilities, would seriously impair the effective administration of the tax policies of Congress.

United States vs. Cumberland Public Service Co., 338 U. S. 451, involved a like question. The Court's decision there, as in the *Court Holding Co.* case, rested upon the ultimate finding of the trial court. It remarked that "It is for the trial court, upon

consideration of an entire transaction, to determine the factual category in which a particular transaction belongs” and in determining the question, we could look beyond the papers executed by the corporation and the shareholders and “consider motives, intent, and conduct in addition to what appears in written instruments used by the parties to control rights as among themselves.”

The testimony of petitioner and that of other witnesses whose testimony he relies upon is to the effect that there were separate negotiations for each class of property. Other evidence cited by respondent to support his determination of a sale for a lump sum without an agreement on the selling price of the wine or winery is, in our opinion, more reasonable and therefore entitled to greater weight. No useful purpose would be served by a detailed discussion of all of the conflicting evidence.

At the time the transaction occurred wine was scarce and in great demand by bottlers. The ceiling price for the wine in petitioner's inventory was only about 55 per cent of its cost. Bottlers of wine, who had a high ceiling price for case goods, could pay considerably more than the ceiling price on bulk sales and still make a profit. Three methods were available to wine producers to dispose of their stocks of wine at a price in excess of 28 cents a gallon without violating regulations of the OPA. One of the methods was to sell the winery with its inventory of wine. That method was used numerous times in California in the taxable year. While there was no direct proof that petitioner was aware of the

three courses available to him for the sale of his wine for more than the prevailing ceiling price for wine alone, the inference is that they were known to him and that he availed himself of one of them. The sale involved here was made while those conditions prevailed.

Petitioner testified, in effect, that after sampling the wine at the winery on December 5 Dumbra accepted his offer to sell all of the wine at the prevailing ceiling price for sales in bulk, the amount to be determined by his accountant, that promptly after their oral agreement on the wine, Dumbra disclosed a desire to purchase the winery but declined to purchase it for his asking price of \$300,000, that while in the office of his accountant the next day Dumbra offered \$273,000 for the winery, which he accepted, and that thereafter "we told them to draw up two deals, one for the winery and one for the wine." Other testimony relied upon by petitioner adds nothing to his statement of the negotiations.

John Dumbra, a disinterested witness who negotiated the purchase for Tiara, testified that after finding the wine to be satisfactory on December 5, he first offered to buy four carloads and then three carloads of wine. Petitioner's response to the offer was, in substance, that he could not make a profit on sales of that quantity,¹ and that in view of the fact that he wanted to get out of business he would not consider the sale of any quantity of wine less than his

¹The inference is that he had in mind his cost of production of about 50 cents a gallon and a ceiling price of 28 cents a gallon.

entire inventory, and the winery, for both of which he set a price of \$350,000; that he, Dumbra, then made a counteroffer of \$330,000 which petitioner refused; that after consulting his principal, petitioner's original offer was accepted, after which petitioner informed him that he would have the contract of sale prepared to show a sale of the wine at one price and the winery at another, the total to be \$350,000, to which there was no objection provided the price did not exceed \$350,000 and the quantity of wine was correct, and that he did not at that time make a separate agreement for the purchase of the wine for \$77,000 and thereafter ask petitioner if he would be interested in the sale of his winery or make a separate agreement for the purchase of the winery for \$273,000.

Victor Dumbra testified that John Dumbra was sent to California with instructions to buy wine and to consult him about deals involving other than a few cars of wine; that it was a known fact that large quantities of wine were being sold "either as a stock sale or total sale of company"; that he did not endeavor to buy or buy a winery without wine in 1943; that while seeking wine for purchase, wineries were offered for sale with the wine, and that in such cases an evaluation was made to determine whether the winery offered with the wine in one transaction made the cost of the wine more than his company could afford to pay; and that when John consulted him about the deal with petitioner, he agreed to the overall price of \$350,000 asked by

petitioner. The testimony of the Dumbras is supported by other evidence.

Petitioner in December 1943 informed F. Aberigi, who lived in or near Sebastopol and had known petitioner for about 50 years, that Tiara wanted to buy the wine only but "to make it legal on account of the O.P.A. ceiling" he sold "the winery and everything," that he received \$1 a gallon for his stock of 400,000 gallons of wine and "Throw [sic] in the good will and the winery," and that he could not have obtained a dollar a gallon for the wine if he had sold the wine only. Petitioner had previously informed Aberigi of a sale over objections of the former's daughter of 100,000 gallons for 70 cents a gallon.

When making settlement in May 1944 with Tiara for its indebtedness to him for services, petitioner agreed to the application of a credit of \$1,000, or \$1 a gallon, for wine withdrawn by him after the sale for his personal use. Upon being questioned about the credit on cross-examination, petitioner first testified that the adjustment was on the basis of the price paid to him, which was the ceiling price of 28 cents a gallon and then, after further examination, that "they give it to me for the ceiling price like I sold to him", and that the credit for \$1,000 was his or Tiara's attorney's mistake. Instead of a mistake, our opinion is that the parties agreed that the credit was a fair estimation of the amount paid by Tiara for the wine. Victor Dumbra testified that if Tiara had paid the full amount of \$1,500 to petitioner, it "would have expected \$1,000 back in cash, definitely." Moreover, petitioner instructed the es-

crow agent to affix revenue stamps on the deed for the winery on the basis of a valuation of \$100,000. A valuation of that amount would leave out of the total consideration a selling price of about 91 cents a gallon for the wine, contrary to the contention being made that it was sold for the ceiling price of 28 cents a gallon.

The evidence must be viewed in the light of proof that Tiara was primarily interested in buying wine needed to remain in business and was willing to purchase wineries only when necessary to obtain wine at an overall price it could pay. Its lack of interest in wineries without a dependent sale of wine is otherwise shown by the fact that a short time after acquiring title to the Lucca Winery, Tiara put the property up for sale for \$60,000 and in December 1944 actually sold it for \$20,000. Petitioner, in effect, concedes that the winery had an original cost in 1943 of about \$32,000. Victor Dumbra testified that when considering the purchase from petitioner he made a mental calculation of the transaction and concluded that the winery might be worth \$50,000 or \$60,000. It is apparent that under the circumstances Tiara would not have agreed to pay \$273,000 for the winery and our opinion is that it did not so agree. Entries made in the books of Tiara showing a cost of \$77,000 for the wine and \$273,000 for the winery are not conclusive. *Doyle vs. Mitchell Bros. Co.*, 247 U. S. 179. The books merely follow the written contract of sale.

We need not determine petitioner's motive for having the written contract of sale specify a sepa-

rate sales price for each class of property. The terms of the agreement in that regard were a matter of indifference to Tiara. It was not necessary to comply with an OPA regulation for there was no ceiling on wine when sold as a part of the business and therefore compliance with the ceiling price on the wine was not the objective. Had the respondent accepted petitioner's representation of sale, the result would have been a saving of tax to petitioner.

In *Estate of Jacob Resler*, 17 T.C.—(January 2, 1952), there was no basis for concluding that any part of the consideration was paid for other than the property taken, and, accordingly, no allocation was necessary. We conclude from a consideration of all of the evidence here that the written contract of sale does not reflect the agreement of the parties and the substance of the transaction between them was a sale of the wine and winery for \$350,000 without any agreement on a selling price for each class of property. So concluding, it was proper for respondent to make an allocation to reflect the consideration paid for the wine and for the winery. *Deutser, et al vs. Marlboro Shirt Co., Inc.*, 81 F. 2d 139, 142; *Haverty Realty & Investment Co.*, 3 T.C. 161; *Nathan Blum*, 5 T.C. 702; *C. D. Johnson Lumber Corp.*, 12 T.C. 348.

The statements attached to the notices of deficiency disclose that the apportionment made by the respondent of the total selling price was determined as "a fair allocation of the sale price of \$350,000 * * *." He asserts on brief that the allocation was based upon fair market value of property.

While contending that the allocation set forth in the contract of sale is binding upon the respondent, petitioners argue that if fair market value is used as a basis no more than \$77,000 should be ascribed to the wine. They made no argument as to the fair market value of the winery.

The petitioners' reasoning is that if the Government had seized the wine under an exercise of its power of condemnation, just compensation to them would have been measured by the fair market value of the property and that the ceiling price of 28 cents a gallon for bulk wine fixed that value. They cite *United States vs. John J. Felon & Co., Inc.*, 334 U. S. 624, and *United States vs. Commodities Trading Corp., et al*, 339 U. S. 121, to support the argument. There is no factual basis here for the application of the cases.

The substance of the transaction here for tax purposes, as already pointed out, is an arm's length sale of two classes of property for one price for both without a ceiling price to limit the consideration. To apply the contention of petitioners to the winery would result in an absurdity, for the winery had a fair market value not in excess of \$75,000 and, consequently, there would be an absence of assets to which to make an allocation of the remaining consideration paid in the transaction.

One of respondent's witnesses placed a fair market value of \$1 a gallon on the wine and another of his witnesses testified that dry wine had a fair market value ranging from 75 cents to \$1 a gallon, depending upon its quality. Victor Dumbra, another

witness for the respondent, first testified that he did not know the approximate amount of consideration that he was paying for the wine but referred to costs of \$1, \$1.10 or \$1.12 a gallon. Thereafter he testified that before authorizing his brother to enter into the transaction, he made a mental calculation of the amount Tiara would be paying for the wine and the winery and although he could not remember the amount he estimated as the cost of the winery, he mentioned the amounts of \$50,000, \$60,000 and \$40,000 in that order. His testimony discloses that he considered that Tiara was paying at least \$1 a gallon for the wine, a price petitioner settled with it for the 1,000 gallons he withdrew from the inventory after the sale was made.

In his determination of the deficiencies, respondent allocated \$302,500 to the sale of the wine, or \$1.10 a gallon, and the remainder of \$47,500 of the total selling price to the winery. Considering all of the evidence on the question we conclude that the wine was sold for \$1 a gallon, or \$275,000, and that the remainder of \$75,000 represents the selling price of the winery.

Decisions will be entered under Rule 50.

Entered February 20, 1952.

[Endorsed]: T.C.U.S. Received Feb. 13, 1952.

The Tax Court of the United States
Washington

Docket No. 25439

GIULIO PARTICELLI,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

Pursuant to the determination of this Court as set forth in its Memorandum Findings of Fact and Opinion entered February 20, 1952, the respondent herein filed a revised recomputation of tax on April 11, 1952, which was not contested when called for hearing on April 30, 1952. It appearing that such recomputation is correct, it is

Ordered and decided: That there is a deficiency in income and victory tax of \$50,135.36 for the year 1943.

/s/ SAMUEL B. HILL,
Judge.

Entered May 1, 1952.

The Tax Court of the United States,
Washington

Docket No. 25440

ESTATE OF ELETTA PARTICELLI, Deceased,
ARTHUR GUERRAZZI, Executor,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the determination of this Court as set forth in its Memorandum Findings of Fact and Opinion entered February 20, 1952, the respondent herein filed a revised recomputation of tax on April 11, 1952, which was not contested when called for hearing on April 30, 1952. It appearing that such recomputation is correct, it is

Ordered and decided: That there is a deficiency in income and victory tax of \$50,135.36 for the year 1943.

/s/ SAMUEL B. HILL,
Judge.

Entered May 1, 1952.

In the United States Court of Appeals
For the Ninth Circuit

Tax Court Docket No. 25439

GIULIO PARTICELLI,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR REVIEW

To the Honorable Judges of the United States Court
of Appeals for the Ninth Circuit:

Giulio Particelli petitions for review of the decision of the Tax Court of the United States entered on May 1, 1952, ordering and deciding that there is a deficiency in his income and victory tax for the calendar year 1943 in the amount of Fifty Thousand One Hundred Thirty Five and 36/100 (\$50,135.36) Dollars.

Petitioner resided in San Francisco, California when he filed his petition for redetermination in the Tax Court, and now resides in Santa Rosa, California. His income and victory tax return for the calendar year 1943 was filed with the Collector of Internal Revenue for the First District of California, in San Francisco, California. Petitioner on review files this petition for review by the Court of Appeals for the Ninth Circuit pursuant to the provisions of sections 1141 and 1142 of the Internal Revenue Code.

Nature of the Controversy

The questions raised in this petition for review fall into two general categories. One category includes several questions relating to the scope of cross-examination permitted counsel for the Commissioner, over the vigorous objections of petitioner's counsel, whereby irrelevant matters were admitted into the record to petitioner's ultimate prejudice, and whereby the judge permitted the Commissioner's counsel to attempt to prove that petitioner had committed crimes of which he had never been formally charged or tried, and which were not a proper issue in this case, this attempt being for purposes of impeachment of petitioner as a witness. This category also includes improper consideration of hearsay evidence which was properly admissible only to establish and test the qualifications of an expert, but on which the Tax Court based findings of substantive fact which in turn form a necessary basis for the ultimate decision it reached.

The second category comprehends the substantive questions which will be raised. Petitioner sold his winery business, consisting of a winery and its entire inventory of wine. After preliminary negotiations, petitioner and the purchaser entered into a written contract of sale wherein the price of the winery was fixed at Two Hundred Seventy Three Thousand (\$273,000) Dollars and the price of the wine at Seventy Seven Thousand (\$77,000) Dollars. The contracting parties were unrelated strangers. Petitioner was under no compulsion to sell, and the buyer was under no compulsion to buy. All the buy-

er's subsequent acts, including entries on its books and in its tax returns, were consistent with the foregoing allocation of price. One question is whether the Commissioner and the Tax Court have authority to disregard the terms of the written contract in these circumstances, based entirely on the preliminary negotiations of the parties. Ultimately, this question is whether they can deny petitioner capital gains treatment of most of the profit he made on the sale of his business.

A second question in this category is the authority of Commissioner and Tax Court to allocate a selling price to the wine far in excess of its ceiling price. The Seventy Seven Thousand (\$77,000) Dollar price allocated to the wine in the written contract of the parties was its ceiling price, fixed by the O.P.A. The question raised here is whether the Government, which fixed the maximum price at which the wine could be sold in ordinary transactions, which price would have been all the Government would have paid petitioner had it condemned the wine, can allocate a higher price to the wine for the purposes of increasing the tax petitioner must pay.

Respectfully submitted,

/s/ VALENTINE BROOKES,

/s/ ARTHUR H. KENT,

Counsel for Petitioner on
Review.

[Endorsed]: Filed July 21, 1952.

[Title of U. S. Court of Appeals and Cause 25439.]

NOTICE OF FILING PETITION
FOR REVIEW

TO: The Honorable The Commissioner of Internal Revenue, Bureau of Internal Revenue, Washington, D. C.

You are hereby notified that Giulio Particelli did on the 21st day of July, 1952, file with the Clerk of the Tax Court of the United States, at Washington, D. C., a petition for review by the United States Court of Appeals for the Ninth Circuit, of the decision of the Tax Court heretofore rendered in the above entitled cause. A copy of the petition for review as filed is hereto attached and served upon you.

Dated: July 21st, 1952.

/s/ VALENTINE BROOKES,
/s/ ARTHUR H. KENT,
Counsel for Petitioner on
Review.

Acknowledgment of Service attached.

[Endorsed]: Filed July 23, 1952.

[Title of U. S. Court of Appeals and Cause 25440.]

PETITION FOR REVIEW

To the Honorable Judges of the United States
Court of Appeals for the Ninth Circuit:

The Estate of Eletta Particelli, Deceased, through Arthur Guerrazzi, Executor, petitions for review of the decision of the Tax Court of the United States entered on May 1, 1952, ordering and deciding that there is a deficiency in the income and victory tax of said deceased for the calendar year 1943 in the amount of Fifty Thousand One Hundred Thirty Five and 36/100 (\$50,135.36) Dollars.

Eletta Particelli resided in San Francisco, California, when she filed her petition for redetermination in the Tax Court, but she thereafter died and her estate and executor were substituted in her stead. Her income and victory tax return for the calendar year 1943 was filed with the Collector of Internal Revenue for the First District of California, in San Francisco, California. Petitioner on review files this petition for review by the Court of Appeals for the Ninth Circuit pursuant to the provisions of sections 1141 and 1142 of the Internal Revenue Code.

Nature of the Controversy

This case is a companion case to that of Giulio Particelli, Tax Court Docket No. 25439, former husband of Eletta Particelli, deceased, and presents the same facts and issues. The two cases were consolidated for trial in the Tax Court and were dis-

posed of in a single opinion. The statement of the nature of the controversy in the petition for review in the case of Giulio Particelli is therefore repeated here.

The questions raised in this petition for review fall into two general categories. One category includes several questions relating to the scope of cross-examination permitted counsel for the Commissioner, over the vigorous objections of petitioner's counsel, whereby irrelevant matters were admitted into the record to petitioner's ultimate prejudice, and whereby the judge permitted the Commissioner's counsel to attempt to prove that petitioner had committed crimes of which he had never been formally charged or tried and which were not proper issue in the case, this attempt being for purposes of impeachment of petitioner as a witness. This category also includes improper consideration of hearsay evidence which was properly admissible only to establish and test qualifications of an expert, but on which the Tax Court based findings of substantive fact which in turn form a necessary basis for the ultimate decision it reached.

The second category comprehends the substantive questions which will be raised. Petitioner sold his winery business, consisting of a winery and its entire inventory of wine. After preliminary negotiations, petitioner and the purchaser entered into a written contract of sale wherein the price of the winery was fixed at Two Hundred Seventy Three Thousand (\$273,000) Dollars and the price of the wine at Seventy Seven Thousand (\$77,000) Dollars.

The contracting parties were unrelated strangers. Petitioner was under no compulsion to sell, and the buyer was under no compulsion to buy. All the buyer's subsequent acts, including entries on its books and in its tax returns, were consistent with the foregoing allocation of price. One question is whether the Commissioner and the Tax Court have authority to disregard the terms of the written contract in these circumstances, based entirely on preliminary negotiations of the parties. Ultimately, this question is whether they can deny petitioner capital gains treatment of most of the profit he made on the sale of his business.

A second question in this category is the authority of Commissioner and Tax Court to allocate a selling price to the wine far in excess of its ceiling price. The Seventy Seven Thousand (\$77,000) Dollar price allocated to the wine in the written contract of the parties was its ceiling price fixed by the O.P.A. The question raised here is whether the Government, which fixed the maximum price at which the wine could be sold in ordinary transactions, which price would have been all the Government would have paid petitioner had it condemned the wine, can allocate a higher price to the wine for the purposes of increasing the tax petitioner must pay.

Respectfully submitted,

/s/ VALENTINE BROOKES,

/s/ ARTHUR H. KENT,

Counsel for Petitioner on
Review

[Endorsed]: T.C.U.S. Filed July 21, 1952.

[Title of U. S. Court of Appeals and Cause 25440.]

NOTICE OF FILING PETITION FOR
REVIEW

To: The Honorable, The Commissioner of Internal Revenue, Bureau of Internal Revenue, Washington, D. C.

You Are Hereby Notified that Arthur Guerrazzi, Executor of the Estate of Eletta Particelli, Deceased, did on the 21st day of July, 1952, file with the Clerk of the Tax Court of the United States, at Washington, D. C., a petition for review by the United States Court of Appeals for the Ninth Circuit, of the decision of the Tax Court heretofore rendered in the above entitled cause. A copy of the petition for review as filed is hereto attached and served upon you.

Dated: July 21st, 1952.

/s/ VALENTINE BROOKES,

/s/ ARTHUR H. KENT,

Counsel for Petitioner on Review

Acknowledgment of Service attached.

[Endorsed]: T.C.U.S. Filed July 23, 1952.

[Title of U. S. Court of Appeals and Causes.]

Tax Court Docket Nos. 25439, 25440

STIPULATION FOR CONSOLIDATION

Whereas, the cases bearing the above designated docket numbers were consolidated for hearing by The Tax Court of the United States and there is only one official report of the proceedings had before The Tax Court and only one opinion covering both cases but a separate judgment or decision was entered in each case; and

Whereas, both cases are now pending in the United States Court of Appeals for the Ninth Circuit on petitions for review filed with The Tax Court by the petitioners;

It Is Hereby Stipulated and Agreed by the parties to the proceedings, by their respective counsel of record, subject to the approval of the Court, that, for the purpose of the appeals so pending, the cases may be consolidated prior to the docketing of the record but after the filing of the notices of appeal.

Dated: July 31st, 1952.

/s/ VALENTINE BROOKES,

/s/ ARTHUR H. KENT,

Attorneys for Petitioners on Review

/s/ ELLIS N. SLACK,

Acting Assistant Attorney General

/s/ CHARLES W. DAVIS,

Chief Counsel, Bureau of Internal
Revenue

Attorneys for Respondent on Review

ORDER OF CONSOLIDATION

It Is Hereby Ordered that the above designated cases be consolidated for briefing, argument and preparation of the record into a single proceeding with a single docket number, and that for the purpose of filing the record on appeal from The Tax Court of the United States the foregoing cases shall be consolidated into a single proceeding with a single record.

Dated: August 1, 1952.

WILLIAM DENMAN,

Chief Judge

HOMER T. BONE,

Circuit Judge

WILLIAM E. ORR,

Circuit Judge

[Endorsed]: T.C.U.S. Filed Aug. 6, 1952.

[Endorsed]: Filed Aug. 2, 1952. Paul P. O'Brien,
Clerk.

The Tax Court of the United States, Washington

Docket Nos. 25439, 25440

[Title of Causes.]

CERTIFICATE

I, Ralph A. Starnes, Chief Deputy Clerk of The Tax Court of the United States, do hereby certify that the foregoing documents, 1 to 63, inclusive, constitute and are all of the original papers and proceedings, including all original exhibits, (A-1 thru

I-9, attached to the stipulation of facts, Petitioner's exhibit 10, Respondent's exhibits J thru N, P, S and T thru Z, admitted in evidence, Respondent's exhibits AA and BB, admitted in evidence at the Deposition of H. L. Hotle and DD, admitted in evidence at the Depositions of John Dumbra and Victor J. Dumbra), on file in my office as the original and complete record in the proceedings before The Tax Court of the United States entitled: "Giulio Particelli, Petitioner, vs. Commissioner of Internal Revenue, Respondent," Docket No. 25439 and "Estate of Eletta Particelli, Deceased, Arthur Guerrazzi, Executor, Petitioner, vs. Commissioner of Internal Revenue, Respondent Docket No. 25-440", and in which the petitioners in The Tax Court have initiated appeals as above numbered and entitled, together with a true copy of the docket entries in said Tax Court proceedings, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 8th day of August, 1952.

[Seal] /s/ RALPH A. STARNES,
Chief Deputy Clerk, The Tax
Court of the United States

The Tax Court of the United States

Docket No. 25439

GIULIO PARTICELLI, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 25440

ESTATE OF ELETTA PARTICELLI, Deceased,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Court Room 421, Appraisers Bldg., San Francisco
Wednesday, May 17, 1950

Met, pursuant to notice, at 10:00 o'clock a.m.

Before: Hon. Samuel B. Hill, Judge.

Appearances: Valentine Brookes, Esq., 220 Montgomery St., San Francisco, Calif., appearing on behalf of Petitioners. Leonard Allen Marcussen, Esq. (Hon. Charles Oliphant, Chief Counsel, Bureau of Internal Revenue) appearing for the Respondent. [1*] * * * * *

whereupon

GIULIO PARTICELLI

was called as a witness on behalf of the Petitioner,

* Page numbering appearing at foot of page of original Reporter's Transcript of Record.

(Testimony of Giulio Particelli.)

and having been first duly sworn, testified as follows:

Direct Examination

The Clerk: State your name and address, please.

A. Giulio Particelli. I live in Sebastopol, 476 South Main Street, Sebastopol.

Q. (By Mr. Brookes): Are you the Petitioner in this proceeding? A. Yes.

Q. Mr. Particelli, it is stipulated that 275,000 gallons of dry wine and the physical properties known as the Lucca Winery were sold in December to Tiara Products Company by one Giulio Particelli. Are you the Giulio Particelli who made that sale? A. Yes.

Q. Prior to that sale, what was the business in which you were engaged? A. Engage?

Q. What was the business, Mr. Particelli, in which you were engaged?

A. In the wine business.

Q. What did you do in that business? [17]

A. Oh, I just make wine and sell. I buy wine from some other winery, old wine, and I put in bottle. I cannot put in bottle my wine.

Mr. Marcussen: I didn't understand the last statement.

The Witness: I buy wine from some other wineries—

Mr. Brookes: Will you repeat your answer?

The Witness: I make some wine every year. In my wine, I can't put no in bottle of my wine because it is too young and dry wine got to be aged.

(Testimony of Giulio Particelli.)

Also I put in bottle some wine I bought from Italian Swiss Colony, from Geyserville Growers, and I sent them to groceries—to bar.

Mr. Marcussen: You said something about you can or can't in the early part of your statement with respect to your own wine. Was it 'can' or 'can't'?

The Witness: I can't because it's too young.

Mr. Marcussen: You can't put your own wine in Bottles because it's too young so you say you bottle for other people?

The Witness: I bottle below my name because I buy the wine from some other people.

Q. (By Mr. Brookes): What type of wine did you buy from other persons?

A. Sauterne wine; Sherry, Port, Muscatel, Burgundy, Sauterne.

Mr. Marcussen: If your Honor please, I would like [18] to ask your Honor to make it clear to the Reporter that if there is the slightest doubt about what the witness says, he should interrupt these proceedings so he is certain to get it correctly in the Record.

The Court: Yes, it is important that we get a correct Record and if you have any difficulty following the enunciation of the witness, make it known and we will try to get it in there right.

Mr. Marcussen: It doesn't matter how often you do that; it must be correct.

Q. (By Mr. Brookes): Mr. Particelli, I ask you to cast your memory back to the year 1943. What

(Testimony of Giulio Particelli.)

were the months in 1943 in which you crushed into wine the grapes which you purchased that year?

A. Oh, started in September, October, and a little bit in November.

Q. Prior to those months, were you—in 1943—were you engaged in selling wine?

A. If I am engage?

Q. Were you selling wine, did you sell wine prior to the 1943 crush?

A. Yes, I sold the wine.

Q. Do you remember the price ranges at which you sold your wine, prior to September, 1943?

A. My wine? [19]

Q. Your wine, as well as the wine which you purchased from others and re-sold?

A. Well——

Mr. Marcussen: In bulk or bottle?

Mr. Brookes: If the answer doesn't come out, I will ask.

Q. (By Mr. Brookes): Will you continue?

A. We have a quite a few crush. The one I buy from Italian Swiss Colony is a high grade wine, and it's a high price I sold. Wine I bought from Petri Wine is a little more cheap; I sell a little more cheap, and the wine I bought from Geyserville Growers and other wineries also different price, and my wine is cheap. My wine I sell, this the cheaper wine, I haven't, because no finished wine. I have no cooler, I no have any pasteurize; I have just one little filter and I can't put in no bottle because it no good after 4, 5 days in bottle.

(Testimony of Giulio Particelli.)

Q. What was the price range at which you sold the Italian Swiss Colony Wine?

A. Oh, we have some blend, sweet wine, one price; \$1.25, \$1.20.

Q. Are these figures a gallon?

A. By gallon, everything in gallon—\$1.40.

Q. And did you carry any Italian Swiss Colony dry wines? A. Yes. [20]

Q. What was the price range?

A. Some \$1.10, 90 cents, 75 cents.

Mr. Marcussen: Bottled or bulk?

The Witness: In bottles.

Mr. Marcussen: But in some quantities of one or two gallons?

The Witness: Oh, lot buy just one gallon a week.

Mr. Marcussen: Again I want to explain to your Honor and also to Counsel, I will ask your indulgence as I go along. Otherwise, I would have to have a verbatim transcript before me, entirely apart from the things I didn't understand. So if you will indulge with me?

Mr. Brookes: You may assume I have no objections until I state my objections.

Mr. Marcussen: Very well. Thank you.

Q. (By Mr. Brookes): Did you sell any of the Italian Swiss Colony wine in bulk quantities?

A. No.

Q. Did you have a retail license? A. Yes.

Q. Were these prices which you indicated a moment ago the prices that you charged at retail or at wholesale? A. Wholesale.

(Testimony of Giulio Particelli.)

Q. What was the price range at which you sold the wine [21] you bought from Petri and re-sold?

A. Oh, dry wine—it was sold for 45 cents up to 65 cents.

Q. Is that a gallon? A. A gallon.

Q. Was this sale in bulk? [21-A]

A. In gallon.

Q. In gallon lots? A. Yes.

Q. And what was the price range at which you sold the wine which you acquired from Geyserville Growers? Is that the name?

A. Geyserville Growers, the same as Petri.

Q. And what was the price range both in bulk and in gallon quantities at which you sold your own wine, in 1943, prior to the September crush?

A. Like I say, I no pour my wine—I no pour my wine in gallons because no finish wine and if I do pour in gallon, they turn cloudy and people don't buy from me any more. Only thing I can sell my wine in bulk—10 gallon barrel, 5 gallon demijohn, 25 gallon, but I can't put in bottles no unfinished wine.

Q. Now, I asked you, Mr. Particelli, also what the price range was at which you sold your own wine in bulk prior to September, 1943?

A. If we buy 50 gallon barrel we sell them at 32c at this time; 25 gallon barrel, sell 34c, 35c; and if you buy 5 gallon demijohn, we sold 38 to 40.

Q. Did those prices which you have quoted include the Federal and State tax?

A. State tax and Federal.

(Testimony of Giulio Particelli.)

Q. In other words, you did not add the tax to the prices [22] which you have just quoted?

A. It is included, tax and all.

Q. Did you have any of your wine from the 1942 crush left in October of 1943?

A. A little bit.

Q. How much?

A. Oh, I can't remember exactly how many thousand gallons I have; not very many.

Q. Prior to the completion of the 1943 crush, in October of 1943—excuse me; in November, you said, of 1943, was most of the wine sold by you the wine which you made yourself, or was most of it that which you purchased from others?

A. Most of the one I buy from the other one.

Mr. Marcussen: Prior to what date was that?

Mr. Brookes: The completion of the 1943 crush which he testified was in November, 1943.

Mr. Marcussen: Prior thereto, his sales were largely—

Mr. Brookes: Mostly of wine purchased from others is what the witness said.

Q. Mr. Particelli, as I stated before, it is stipulated in this case that in December, 1943, the wine and the physical properties of the Lucca Winery, your winery, were sold to the Tiara Products Company. The exhibit 1(a), which the parties have stipulated to, is the agreement of sale between yourself and one John Dumbra. Had you known John Dumbra before this [23] transaction?

A. I never saw him before.

(Testimony of Giulio Particelli.)

Q. Was he related to you? A. No.

Q. Before this transaction, had you known anyone connected with Tiara Products Company?

A. No.

Q. Was anyone connected with Tiara Products Company related to you? A. No.

Q. Was the wine which you sold in December, 1943, to Tiara Products Company entirely the wine which you had made yourself? A. Yes.

Q. Was it entirely of one type; that is, dry or the other? A. It was all dry.

Q. All dry. By that do you mean it was all of the type which contained not more than 14% alcohol? A. What?

Q. I think the witness does not understand me. Did the wine contain more than 14% alcohol?

A. No.

Q. Was it all less?

A. Most all of my wines contain between 11 and 12.

Q. And the wine which you sold to Tiara?

A. Between 11 and 12. [24]

Q. When had this wine been made?

A. It was made during the crush in 1943.

Q. Was there some small quantity which was carried over?

Mr. Marcussen: I object to that as leading, your Honor.

The Court: He said there was some quantity left over. I think it is all right.

Q. (By Mr. Brookes): Was any of the 1942 crush, of the wine of the 1942 crush, included in the

(Testimony of Giulio Particelli.)

wine which you sold to Tiara? A. Yes.

Q. About how much?

A. I say I don't remember; many thousand gallons—very little.

The Court: You don't remember how many thousands, is that it? The Witness: Yes.

Q. (By Mr. Brookes): Did I understand you to say very little? A. Very little.

Q. At the time of the sale of the wine to Tiara Products Company, was the wine ready for bottling? A. No.

Q. Was it ready for use as table wine?

A. I have no rack yet. [25]

Q. What would you have had to do to this wine to make it ready for sale in bottles as bottled table wine?

A. First I have to get the rack and take off all this lees, put in some other tank and you get it clarified. Put some stuff inside, chemical stuff, and have a set down and a rack again, and then you got the filter. You have got to have a good filter if you want to put in bottle.

You have to have a cooler. You have to have it pasteurized and pretty good finish, because you guarantee the wine so it would be sold in gallon.

Mr. Brookes: Mr. Reporter, will you read back that answer, please?

(The last answer was read by the reporter.)

Q. (By Mr. Brookes): Is that correctly stated?

A. Pasteurized in cooler.

Mr. Marcussen: Pretty good what?

(Testimony of Giulio Particelli.)

The Witness: Finishing filter.

Q. (By Mr. Brookes): Mr. Particelli, is that process of readying the raw wine for the bottling known as finishing? A. What?

Q. Is that process of making raw wine ready for bottling known as finishing the wine?

A. Like I explained before, if the rack won't take it [26] from the other, you have got to clarify it, and the cooler and pasteurize; filter three, four times.

Q. Did you have a bottling plant?

A. Yes, I have a little bottling plant, no by the winery, about a block farther away.

Q. What type was it?

A. Just a—we bottle by hand and by hose, and if I bought a little machinery—we just fill up 6 bottle at a time and put the wine inside the machinery and we fill the bottle.

Q. Did you have a pasteurizer? A. No.

Q. How many thousands of gallons would your cooperage hold for aging purposes?

A. Oh, I can't remember exactly. About 270,000, something like that.

Q. Was your cooperage filled at the time of sale with the wine that you have described?

A. Yes.

Q. Did you have any other cooperage available to you in which you could have aged it further?

A. No.

Q. Was there any way of settling the sediment in the wine other than by aging in cooperage or by pasteurizing?

(Testimony of Giulio Particelli.)

A. Well, if I have a pasteurize, I can finish.

Q. There is no other way of doing it?

A. No other way.

Q. In December of 1943,—strike that. Prior to December [27] of 1943, had you ever purchased finished wine for the purpose of blending with your own unfinished wine? A. Yes.

Q. From whom had you purchased the finished wine that you used in this way?

A. I purchased from Geyserville Growers, Petri Wine, Italian Swiss Colony.

Q. In December, 1943, were you able to buy any more finished wine from these wineries?

A. No in bulk.

Q. Had you tried? A. Yes.

Q. Had they refused to sell finished wine to you altogether?

A. Just in case goods, in bottles.

Q. What size bottles?

A. Gallon, half-gallon, and quart.

Q. At what prices?

A. I can't remember how much it was.

Q. Could you have used this wine so purchased in gallon and half-gallon bottles for blending with your own wine? A. No, I can't.

Q. Why not, Mr. Particelli?

A. Cost me too much money.

Q. Mr. Particelli, the record which has been stipulated [28] to exist shows that the cost of the grapes to you which you purchased in 1943 and crushed in 1943, that the purchase price of the grapes was

(Testimony of Giulio Particelli.)

greater than the \$77,000 for which you sold this wine. Why did you pay so much for the grapes?

A. Well, everybody is paying this price and everybody—we think the O.P.A., they going to raise its price after we finish crushing.

Q. Did you pay any more for the grapes than you had to, to get them? A. No.

Mr. Marcussen: Object to that as leading, if your Honor please.

The Court: Well, it is leading. I think we will have to indulge a little in leading here because of this witness.

Mr. Brookes: I will withdraw the question. Perhaps I can do better.

Q. Did you buy the grapes as cheaply as you could? A. Naturally, I tried.

Q. Do you know whether other wineries were paying this same price for grapes?

A. All I know everybody paid the same.

Mr. Marcussen: He hasn't testified to what he paid, has he, Counsel?

Mr. Brookes: That is stipulated in the facts agreed to. [29]

Mr. Marcussen: You mean it's stipulated in a lump sum?

Mr. Brookes: We don't have the tonnage, I think.

Mr. Marcussen: If you want to bring that out—

Mr. Brookes: I have no desire to bring it out. I am satisfied with what we do have. I am not interested in what he paid per ton.

(Testimony of Giulio Particelli.)

Q. Mr. Particelli, will you describe in your own words the events which lead to the agreement of sale which has been stipulated to, between yourself and John Dumbra?

A. Well, like I say, I never seen Mr. Dumbra before, and I am down south in Fresno for a couple of days. When I come home, my daughter tell me some man is coming, in the office, and they want to buy some wine and they say he is down to Santa Rosa in a hotel and he is call him up again. They call him up again the morning to see if you home and I told him I expect you later tonight. And I come home around 6 o'clock in the night and as soon as I reach home, the dinner on the table and I sit down and started to eat and the time my daughter try to explain to me about this man, the telephone ring and my daughter say, "I betcha this man see if you come home yet."

I answer and the Mr. Dumbra I ask what he wanted and he said, "I want to buy some wine from you."

I said, "all right, come up tomorrow morning, see if we can do some business." [30]

Mr. Marcussen: I beg your pardon, all right 'what'?

A. "All right, you come up tomorrow morning. I be home."

He say, "Why don't you come down tonight, meet me. I am down in the Santa Rosa Hotel, and it don't take long to have dinner and talk over."

And then finally I decide to go and I meet there.

(Testimony of Giulio Particelli.)

We go down to the bar and have a drink and a high-ball and we start to talk about buy wine, how much wine I have on hand, and if I want to sell them. And I say, "If I do sell, I be disgusted because of the ceiling price, but if I do sell, I want to sell all the wine I have on hand," and they ask me, "How much you asking?"

Well, as I said before, "You know pretty well; I can't ask you more than ceiling price because I don't want to go to trouble and you coming up and see the inventory. If you want to buy all, I sold to you for the ceiling price because you got to take the bum and good, all wine in the winery, lees and everything; otherwise, I no sell."

Well, he said, "I come up tomorrow morning," and they coming up next morning. I showed the inventory; I showed each tank, how much—how much alcohol in each tank. I write it down how much alcohol because I have to report to my chemist in Berkeley, and he said, "All right, I buy all."

And when we—, "Before you buy all, I got to go down to the City and see my accountant and see how much the ceiling [31] price correct, because one says one price and one says the other. I don't want to go in trouble. If you want to come down tomorrow I go down in the City."

"All right, for the ceiling price, I take over," and we come out to the winery, out in the yard, there look all over my place and say, "You have a nice little winery, 2 switches right on the tracks, one in back, one in the front."

(Testimony of Giulio Particelli.)

Mr. Marcussen: Who said this?

A. He says new winery.

Mr. Marcussen: Who said?

A. Dumbra. And he said, "You don't want to sell the winery too?"

He asked me if I want to sold the winery. "It's all right if you want to pay the price for it," and he says, "How much you want?"

I say, "You don't want to buy him. I don't care if I sell anyway."

He say, "How much you wanted?" I wanted \$300,000.

He says, "Too much money."

Well, we leave it there, and we come down the next morning in Montgomer, to my accountant, George Oefinger, and the time we be down there in the office, they ask me again if I want to sell the winery. I say, "I tell you if you want to buy," and they told him, "No, well, they think it over."

So I thought about it. "I give you \$273,000." [32]

I think over a little bit. "That's all right," and we told them to draw two deals, one for the winery, and one for the wine and that is all we do.

Q. (By Mr. Brookes): Mr. Particelli, did you have advice from anyone that when you sold the wine, if you also sold the winery, you had to observe the ceiling price for the wine?

A. I have to what?

Q. Did you have advice from anyone that you

(Testimony of Giulio Particelli.)

had to observe the ceiling price for the wine in this sale?

A. Everybody know we got to sell by the ceiling price.

Q. Were you advised by anyone that the ceiling price also applied to the sale of the wine, if you also sold the winery?

A. Well, they have nothing to do about the winery, the ceiling price and the wine.

Mr. Brookes: That concludes my examination in Chief, your Honor.

The Court: You may cross examine.

Mr. Marcussen: May we have about a 10 minute recess?

The Court: We will have about a 10 minute recess.

(Whereupon a short recess was taken.)

Cross Examination

Mr. Marcussen: If your Honor please, I am rather embarrassed. I don't seem to have brought my notes with me for the cross examination of this witness. I would like to proceed [33] with the cross examination and wonder if I might be permitted to continue the cross examination after lunch?

The Court: All right, go ahead.

Q. (By Mr. Marcussen): Mr. Particelli, did you purchase revenue stamps from time to time for placement on your bottles and on the other wine that you sold? A. Yes.

Q. When you sold out to Tiara Products Com-

(Testimony of Giulio Particelli.)

pany, did you have any stamps left?

A. I don't remember. You will have to ask my daughter because she is the one that keeps the office.

Q. Well, ordinarily, how did you purchase your stamps, from time to time as you needed them?

A. My daughter goes down to Santa Rosa.

Q. I know, but you are in the business of selling wine and you have to purchase stamps?

A. Yes.

Q. That is a very important part of the wine business, isn't it, selling wine?

A. My daughter does.

Q. That is a very important part of the business, isn't it?

A. Oh yes, you can't sold no wine without a stamp.

Q. Now, you purchased those stamps from time to time, [34] didn't you?

A. My daughter did.

Q. She did it for you? Is that correct.

A. Yes.

Q. And did you purchase stamps both for retail sales and wholesale sales in your store and also for bulk sales? A. That's right.

Q. All this time, do you mean to say you don't know how the stamps were purchased?

A. No, because she is the one that was taking care of it.

Q. Who put the stamps on there?

A. My son-in-law, and my daughter.

(Testimony of Giulio Particelli.)

Q. Both of them purchased those stamps from time to time? A. Yes.

Q. Prior to this sale, what was your financial position, prior to this sale?

A. You mean when I sell it in——

Q. Tiara? A. Over \$75,000 to the bank.

Q. Owed \$75,000 to the bank?

A. I owed \$75,000 to the bank.

Q. And you—and those were borrowings that you made in connection with your business, is that correct? A. Yes.

Mr. Marcussen: I ask, Counsel, do you propose to call [35] the daughter as a witness in this case?

Mr. Brookes: Yes.

Q. (By Mr. Marcussen): Generally, you don't know whether you purchased these stamps from time to time as needed for the sales, or whether you kept quite a few stamps on hand, is that correct?

A. No.

Q. Did you have any idea? A. No.

Q. You wouldn't know whether you had, say, \$100 worth of stamps, or \$200 worth of stamps?

A. No, because I leave everything to her to do.

Q. If you owe \$70,000 to the bank, do you from time to time keep track of your finances?

A. I paid interest every month. My daughter is taking care of it too.

Q. So you had to be quite careful of your expenditures, did you, from time to time?

A. What?

Q. Did you find it necessary to go rather care-

(Testimony of Giulio Particelli.)

fully about what money you spent from time to time? A. Yes.

Q. So you didn't spend more for things you didn't need?

A. Sure.

Q. Would that refresh your recollection one way or the [36] other as to whether you had a lot of stamps on hand or not?

A. I don't know if we had a lot of stamps on hand or not.

Q. You don't know?

A. No.

Q. Do you have any records?

A. My daughter keeps records.

Q. I ask you, do you have any records?

A. No.

Q. What happened to your records?

A. My records—burn them up.

Mr. Brookes: Your Honor, I think that I have to object to any further continuation of cross examination beyond the scope of the direct. If Counsel wishes to make Mr. Particelli his witness, naturally he is free to do so.

The Court: It doesn't make much difference. He would be an adverse party and wouldn't be bound by his answers anyway.

Mr. Marcussen: Exactly. He is the tax payer in the case and it seems to me the scope is almost limitless.

The Court: I will overrule the objection.

Q. (By Mr. Marcussen): Will you tell the

(Testimony of Giulio Particelli.)

Court how it came about the records were burned?

A. Well, when—after I sold the wine and go out of the business in Forestville, I bought a little farm in Rincon [37] Valley, the other side of Santa Rosa 4 miles, and I—they have no house on this ranch, 10 acre ranch. It used to have an old barn, and a little cabin.

Q. This is where the winery is?

A. No, after I sold the winery in Forestville, I move to Rincon Valley, and I move everything I have down in Forestville including my records, paper, and I put everything in the old barn down there.

Q. By everything, do you mean all of your records and everything? A. Everything.

Q. Pertaining to the operation of your business?

A. Everything I bring down there in the Rincon Valley and I fix up a little cabin for live in myself. My daughter, my wife, my son-in-law live in the City, and I started to build a house.

Q. You were building it?

A. No, carpenter; I have 2 or 3 carpenters, and I live in a little cabin, and after the house is finished, I want to clean up the barn and I thought, old man, Dante Culici—

Q. Where is he now?

A. He is dead, 3 years ago, in Santa Rosa. He work over 2 years for me, and I told Dante, said, "You clean up the barn and burn up all this stuff you find no good for nothing," and I go in Santa Rosa to order some lumber. [39]

(Testimony of Giulio Particelli.)

Q. I didn't get that?

A. I told him to clean up the barn and straighten up all this paper and everything, there together, and burn the one is no good.

Q. And what?

A. Burn them up, the one that is no good and I got to go in Santa Rosa to order some lumber for my house; and the time I go to Santa Rosa when I come back they have burned everything, all my records, everything I have in the winery, they burn everything.

Q. How did he know what papers were no good and what papers were good?

A. I told him, if you find some boxes all packed up, not touch.

Q. And you had the winery records all packed away in boxes? A. Yes.

Q. And so Dante, here, comes along and burns the whole works up, is that it?

A. Yes, that is what happened.

Q. Did you have those papers separated from the other papers?

A. It was all together when we moved.

Q. You didn't even separate them?

A. When we moved, we put them all down in the barn [40] together.

Q. Now, did you ever have any chicken coops, Mr.— A. —chicken?

Q. Particelli?

A. You mean if I have any chickens?

Q. Did you ever have any chicken coops or small

(Testimony of Giulio Particelli.)

buildings on your business establishment there?

A. In Rincon Valley?

Q. Any place?

A. No, I have a little chicken house at home in the Rincon Valley. I just raise a few chickens for my own use.

Q. What other buildings were there on your property there, the Rincon Valley property?

A. Oh, the house, and the chicken house, and the pump house and the barn.

Q. Did you ever have a chicken house burn up on you? A. No.

Q. You never did?

A. In the Rincon Valley, you mean?

Q. Any place, any chicken house any place?

A. I have one burn up in Forestville about 20 years ago.

Q. 20 years ago? A. Yes.

Q. Did you collect some insurance on that?

A. Yes. [41]

Mr. Brookes: Your Honor, isn't the examination of witnesses in this case intended to be confined to the issue before the Court?

The Court: Yes, I don't know if the 20 years back would be very material.

Mr. Marcussen: I have some other purpose, and the witness has testified here that his records were burned and I wish to impeach him, if your Honor please, by showing a series of burnings, and I think it is material to show that this Witness is in the habit of having fires.

(Testimony of Giulio Particelli.)

The Court: All right, I will overrule it.

Q. (By Mr. Marcussen): Now, did you ever have any other fires?

A. Yes, my house burn up in 1930.

Q. Your house? A. In Forestville.

Q. In Forestville? A. Yes, sir.

Q. Do you know anything about how that came to burn?

A. I don't. I been down town there; when we reach home, everything in fire.

Q. Did you collect your insurance on that?

A. Yes.

Q. Now, did you have any other fires?

A. Have a little store on the highway burn up; my daughter [42] handle the store.

Q. What year was that?

A. I think in 1934.

Q. Wasn't it in 1935?

A. I don't know; I don't remember.

Q. You don't know, and did you get the insurance on that?

A. Just a little insurance we had on it.

Q. It was just a small place, wasn't it?

A. Yes.

Q. Small place of business?

A. Just to sell wine and beer.

Q. Sell wine and beer on the road side there?

A. In the highway.

Q. Did you live in there too?

A. I sleep night in the time we run the business, not in the winter time.

(Testimony of Giulio Particelli.)

Q. What did you do after that fire?

A. Oh, I have a shoe store in Sebastopol—shoe repair.

Q. After your road side stand—now, did you get your insurance on that building on the road side there?

A. Yes.

Q. Did you rebuild it?

A. No.

Q. You didn't go into that business again, did you?

A. It was started, we started to sell the wine down in [43] home—in the ranch.

Q. At another place?

A. In the ranch.

Q. Yes.

A. When we leave it.

Q. At your ranch?

A. Yes.

Q. Did you have the ranch at the time you had the roadside place?

A. Yes.

Q. Now, were there any of your records that were not destroyed?

A. My records is all destroyed down in Rincon Valley.

Q. All destroyed down in Rincon Valley?

A. That is what I think.

Q. Your intention was to remove everything from the winery and take it down to Rincon Valley, was it?

A. In the barn, yes.

Q. Did you have a home at that time?

A. In Rincon Valley?

Q. Any place?

A. No, I been sold.

Q. You sold that with the winery?

A. No.

Q. Where were you living at the time you sold the winery? [44]

(Testimony of Giulio Particelli.)

A. I live in Forestville, and that time I had a home.

Q. You had a home? A. Yes.

Q. And you had the home after the sale too, is that correct? A. Yes.

Q. And you didn't consider the possibility of taking your records to your home, did you?

A. I have a home?

Q. Yes.

A. But after I sold my home, I moved down to Rincon Valley.

Q. You sold your home also after you sold your winery to Tiara Products?

A. Pretty near 2 years after.

Q. 2 years after? A. Yes.

Q. When did you remove the records from the winery?

A. As soon as I sold the business, and the grocery business in Forestville, we take everything home down to the ranch.

Q. And then a year and a half later?

A. I sold the ranch.

Q. You sold the home. Why didn't you take your records to your home, Mr. Particelli, instead of putting them in the barn? [45]

A. I didn't have no home down on Rincon Valley.

Q. I see.

A. I had a little cabin and the barn there, and I sleep there.

Q. You would rather have the records out at the barn, rather than where you live?

(Testimony of Giulio Particelli.)

A. I didn't have a home in Rincon Valley, I just build a home.

Q. Where was your home?

A. It was no place; I had a little cabin.

Q. Didn't you testify that you had a home in Forestville at the time you sold the winery?

A. After I move from my home in Forestville and after I sold the winery, I also sold my ranch and I got to give the possession of the ranch and I got to move everything to Rincon Valley and to the other ranch I have there, and down there I don't have no home.

Q. Will you please listen carefully and check me whether my understanding of your testimony is correct. At the time you sold the winery in December of 1943, you had a home in which you lived at Forestville, correct?

A. One mile from Forestville, yes.

Q. And after you sold the winery, you bought a place down at Rincon Valley where you had a barn, is that correct?

A. Yes. [46]

Q. And after you sold the winery, immediately after, is that it?

A. No, no.

Q. When?

A. About a year and a half.

Q. A year and a half?

A. Pretty near a year after I sold the winery.

Q. More than a year afterward?

A. Yes.

Q. Then you left your records—you mean to say you left your records there at the winery?

A. After we close the winery and after I give the key for Mr. Dumbra before I move on over to

(Testimony of Giulio Particelli.)

my ranch in the home in Forestville.

Q. In your home? Is that what you testified to a moment ago? Didn't you say you moved up to the barn?

A. After I sold the ranch a year, after I sold the ranch then I move down in Rincon Valley in the other ranch.

Q. When you sold the Forestville ranch, did you buy another house?

A. No, I bought this little ranch down to Rincon Valley.

Q. What was on that ranch?

A. Just a barn and a little shack.

Q. A little shack?

A. And the old house. [47]

Q. And an old house? A. Yes.

Q. Where did you live?

A. I live in the little shack.

Q. Who lived in the old house?

A. Nobody, because no good for living and I want to fix it.

Q. I see. Now, how long was the little shack?

A. Oh, I think about 14 by 18, and I have a little kitchen and I haven't any bedroom.

Q. I see. Did anybody else live there with you?

A. No.

Q. Now, after you sold the winery property and the wine, what did you do?

A. I bought this ranch down in Rincon Valley and I started building this little home.

Q. Did you participate in the building of that?

(Testimony of Giulio Particelli.)

A. I had carpenters do it and I helped.

Q. I want to know what did you do by way of work? How did you spend your time?

A. Down on the ranch.

Q. Did you buy that ranch immediately after the sale?

A. After I sold the one I have in Forestville, I bought the other right away.

Q. That was a year and a half after? [48]

A. And before I had my ranch in Forestville, I worked in the ranch.

Q. You worked on the ranch? A. Yes.

Q. How many acres do you have on that ranch?

A. Forestville?

Q. Yes. A. 50.

Q. Did you have any other ranches at that time?

A. I have a couple acre here in Forestville, just pasture.

Q. The 50 acre ranch, what is on that?

A. Oh, some grapes, peaches, prunes, just for home use; most vineyard.

Q. You also said apples, didn't you?

A. Apples.

Q. How many acres of vineyards?

A. Oh, between vineyard and apple and cherry cultivation, around 20 acres.

Q. A total of 20 acres under cultivation?

A. Yes.

Q. And how much of that was vineyards?

A. It's all together. I have the fruit between the vineyard, you know.

(Testimony of Giulio Particelli.)

Q. So you can't very well make an estimate of that, is that correct? [49]

A. Just a little bit grape.

Q. How many tons of grapes did you get from that in 1943?

A. Oh, I don't think we take off about 15, 18 ton; I forget how many, really.

Q. About how many in the year before, in '42?

A. Well, no quite as much because lot of new vineyards come up. I plant a little bit, little by little by myself.

Q. You estimated 15 or 18 tons in '43. How much would you estimate in '42?

A. Maybe about 12 ton, 13.

Q. Yes.

A. I don't know; I don't remember.

Q. Now, did you have any other ranches beside this ranch? A. No.

Q. And the other 2 acres was pasture land, you say? A. Pasture land.

Q. All right. Now going back to December, 1943, after you made the sale, how did you spend your time, what work did you do?

A. I say I worked in the ranch in Forestville.

Q. What other work did you do?

A. Just work on the ranch.

Q. In the ranch? A. Yes. [50]

Q. Did you do any work on the winery?

A. I work in the winery until I gave the key to Mr. Dumbra.

Q. When did you give him the key?

(Testimony of Giulio Particelli.)

A. First of May.

Q. First of May, and between December and the first of May, that is between December 6, all of December and the first few months of 1944 up until May 1, what did you do in the winery?

A. I used to go, and do nothing, and after we make the deal, I started to ship wine in New York for Mr. Dumbra.

Q. Was that a part of your agreement with Mr. Dumbra?

A. Why, if I want to stay there and help, I have a man work—helped the man, he is paid for to fill him up with the wine and ship to him.

Q. And so you handled all the shipments for Tiara up until May 1, is that correct?

A. Until May 1st.

Q. Did that occupy a good share of your time during that period?

A. If you want to keep it clean; if you want to keep the tank full and if you want to take care of the winery, you know.

Q. Do you have to clean the tank cars?

A. If you draw one tank, if you don't want to, you have to go inside and polish. [51]

Q. That is the tank, the cooperage; you have to go in there and clean them up?

A. After your wine is gone.

Q. When you get the cars delivered to you like that, are they clean or dirty?

A. You have to wash them out.

Q. Did that take a good deal of time?

(Testimony of Giulio Particelli.)

A. Take about 3 or 4 hours; depends on how they come.

Q. About 3 or 4 hours? A. Yes.

Q. And how many tanks would you say that you filled for them during that period of time from December to the end of April?

A. I don't know; I ship, I don't remember how many tank cars full.

Q. What proportion, would you say, of the wine?

A. Sometimes they send me 2 cars to fill up in one day; sometimes they stay 2, 3 days and never send one.

Q. By the way, what capacity were these cars?

A. 8,000; 6,000 gallons.

Q. What were most of them?

A. Mostly 8,000 thousand gallons.

Q. Are you sure? A. Eight.

Q. Weren't most of them 6,000? [52]

A. Yes.

Q. But they varied between 6 and 8,000, is that correct? A. Yes.

Mr. Marcussen: Now, if your Honor please, I have just asked Counsel whether he would stipulate with me that A. M. Mull, Jr., is an attorney at Sacramento, California, and that he was the attorney for Tiara Products Company in closing this purchase transaction for the winery and the wine, and that he was also Tiara's attorney in fact to handle the business details connected with that closing, such as paying bills and arranging to have work done for them at the winery; and arranging

(Testimony of Giulio Particelli.)

to have Mr. Particelli receive all that was coming to him and all of the various business incidentals connected with the closing of such a transaction of that kind. Is that stipulated, Counsel?

Mr. Brookes: So stipulated.

Mr. Marcussen: If your Honor please, I have here Respondent's Exhibit J for identification, and I ask Counsel to stipulate that this is a tabulation entitled Lucca Shipments; parenthetically Lucca Winery is the name of the winery and that it is a statement of shipments beginning with a shipment on—I beg your pardon. Yes, it is a statement of shipments beginning on January 10, 1944, and showing shipments down to April 14. It shows a total shipment of 183,369 gallons and it identifies the tank cars and their capacity; and I will ask [53] Counsel to stipulate that that statement is such a statement and that it was received from the files of Mr. Mull, as attorney at law and attorney in fact for Tiara Products Company.

Mr. Brookes: Petitioners stipulate that the paper is what it is represented to be and that it was found in the file. Did you identify the file?

Mr. Marcussen: Yes, Mr. Mull's file for Tiara Products.

Mr. Brookes: It was found in that file?

Mr. Marcussen: Very well. For the purpose of the Record, I call your Honor's attention to the file and that is a total of approximately 27 shipments, and I think approximately 17 show a capa-

(Testimony of Giulio Particelli.)

city of slightly over 6,000 gallons. I offer that in evidence as Respondent's Exhibit J.

The Court: Admitted.

(Whereupon the document marked Respondent's Exhibit J for identification was received.)

Q. (By Mr. Marcussen): What else did you do besides making arrangements for the shipments of the wine to Tiara or at its order?

A. Nothing.

Q. You didn't do anything? A. No.

Q. Did you make outlays for them in money to pay people for services performed?

A. Who? [54]

Q. Did you pay the bills for them, for Tiara?

A. No, the banker paid.

Q. The bank? A. The bank of Sonoma.

Q. Didn't you pay bills around the winery?

A. Small bills and the total the bill to the bank and Mr. Mull sent them the money.

Q. Mr. who?

A. Mull. My daughter taking care of all this.

Q. Did you agree with Tiara Products Company to handle some of the details like the payment of the telephone bill and other incidental charges that arose at the winery?

A. If I call them up for his attorney, I charge him the call for. My daughter taking care of all this.

Q. I hand you Respondent's Exhibit K for identification which is a sheet of paper containing a

(Testimony of Giulio Particelli.)

certain tabulation thereon, and it's on a piece of stationery entitled, "Lucca Winery, Wholesale Producers of all kind of high grade wines, at reasonable prices," and there is other information on the heading there, and I ask you to look at the tabulation contained there and ask you to state what that is, if you know?

A. There is one here, Orsolini, the man working for me.

Q. Arthur Guerrazzi is the next one showing a payment of \$43.32, and he is your son-in-law?

A. Yes. [55]

Q. The gentleman sitting there. The first one to Orsolini, that is in the amount of \$35.00?

A. He used to work for me before.

Q. You paid him that money, did you?

A. Yes.

Q. And did you make all these payments here that are listed on that?

A. My daughter.

Q. Were they paid out of your funds?

A. Yes.

Q. In your money?

A. Yes.

Q. And what were they for?

A. For work.

Q. For working there?

A. Yes.

Q. Who were they working for?

A. Maybe shipping wine for Mr. Dumbra.

Q. So it does appear that you did make payments from time to time, and they refunded to you?

A. Yes.

Q. That is correct, isn't it?

A. Yes.

(Testimony of Giulio Particelli.)

Mr. Marcussen: I offer this as Respondent's Exhibit K in evidence, if your Honor please. I call your Honor's [56] attention at the foot of the page. It shows total payments of \$1,243.26 through March 31, 1944, and that the last statement on the page is that this does not include Mr. Particelli's work.

The Court: Admitted.

(Whereupon the document marked Respondent's Exhibit K for identification was received.)

Q. (By Mr. Marcussen): Now, what were you paid for your work, Mr. Particelli?

A. He paid me so much a day.

Q. A day? A. Yes, so much a month.

Q. A month? A. Yes.

Q. Which is it now? What was your rate of pay?

A. Well, I told you, if I work for you one month and during the shipping I said I want to be paid.

Q. I have no doubt of that. I just want to know how much you were paid, Mr. Particelli?

A. I forget how much they give me. I don't remember. I left it to him how much he give me.

Q. Didn't you have an agreement with him?

A. No.

Q. Didn't you have an agreement with him that you were to get \$100 a month?

A. No, I don't remember if I do. [57]

Q. You would not say that was not the agreement that you had?

(Testimony of Giulio Particelli.)

A. No, I don't remember if I have an agreement at all.

Q. I see. Now in connection with the work that you were doing for Tiara Products Company at the Lucca Winery after the sale, who handled all these business transactions for you?

A. My daughter.

Q. Your daughter? A. Yes.

Q. How did you get your money here of \$1,-243.26?

A. Mostly attorney settle it—send it down; I don't remember.

Q. You sent this to the attorney in Sacramento?

A. Ask my daughter. She is the one taking care of it.

Q. You are referring to Mr. Mull, are you?

A. Yes.

Q. Do you know who would have sent that to Mr. Mull? A. I don't know who sent it.

Q. Did Fred Foster send it?

A. I don't know.

Q. Who is Fred Foster, do you know?

A. He is a friend of my attorney from San Francisco.

Q. He is a friend of your attorney?

A. Yes.

Q. Now, is he an attorney? [58]

A. I think Fred Foster is an attorney. I know one Foster here in the City is an attorney; I don't know if he is the one.

Q. Now, who were you referring to when you

(Testimony of Giulio Particelli.)

were referring to your attorney?

A. No, not my attorney, a friend of my attorney, but no my attorney.

Q. Who was your attorney?

A. My attorney is Louie Lambert in Santa Rosa. He passed away in 1946.

Q. Yes. Did Mr. Foster have anything to do with this transaction of sale? A. Yes.

Q. What did he have to do with it?

A. I just—I want him to help me to do the thing all right.

Q. Did you go to him after you signed the agreement or before?

A. No, before. He come down Mr. George Oefinger's office together by me.

Q. And then after you talked to him, did he perform any services for you in connection with the closing of the deal? A. No.

Q. He didn't?

A. No, if I can help you, I will be glad; no for money because he is a very friendly to Mr. Hess, the lumber company. [59]

Q. What did you say about Henry Hess Lumber Company?

A. He told, if you need any advice for attorney or so, go down to my attorney, you don't have to pay one penny.

Q. And that is Fred Foster?

A. That is Mr. Hess lumber.

Q. Lambert? A. No. Hess lumber.

Q. But, Hess told you that, and they were re-

(Testimony of Giulio Particelli.)

ferring to Mr. Foster? A. Yes.

Q. So you went to Mr. Foster? A. Yes.

Q. Did he actually charge you for—

A. No.

Q. You never paid him anything for any services? A. No.

Q. Were any funds that were due you from Tiara Products Company paid to you through Mr. Foster? A. I don't remember.

Q. Don't remember that? A. No.

Q. Do you ever remember receiving a credit for \$1,500 for your services to Tiara Products Company?

A. My daughter is taking care of all of books, I cannot remember, because all the mail come to him, and he makes all the [60] bills and expenses.

Q. Didn't your daughter ever report to you the financial condition of your business in connection with this transaction? A. Yes.

Q. She did? A. Yes, report to me.

Q. Do you remember then whether you received a credit of \$1,500 for your services?

A. I don't remember at this time, now.

Q. Well, did you receive any credit for your services? A. Yes, they paid me some.

Q. But you don't know how much it was?

A. No.

Q. And you don't know now how you got it?

A. Well, I must have got it some way.

Q. How much wine went to Tiara Products Company as a result of this sale?

(Testimony of Giulio Particelli.)

A. How much?

Q. Yes. How much wine did—was involved in the sale to Tiara Products Company?

A. I can't tell you exactly. I have all the cooperage full.

Q. I will call your attention to the fact that the agreement calls for 275,000 gallons, you remember that, do you? [61] A. Yes.

Q. Did they receive 275,000 gallons?

A. I don't know because when I left the winery there was still some wine in the winery.

Q. Was there any modification of your agreement to ship them 275,000 gallons?

A. No, if I want to quit the next day.

Q. You what?

A. If I want to quit, we have between me and Mr. Dumbra, as soon as he be able to change the bond in his name and license in his name, I am going to work there for him, and she say 15 days, 15 days. We wrote a letter for Mr. Mull and so finally we get everything down to May 1st, and still have some wine in the winery.

Q. Yes. Now, this 15 days—15 day business that you were mentioning, that was an extension of time, was it, from time to time for the closing of this escrow agreement, is that your understanding of it?

A. Yes, because we closed the agreement before—I can't turn over the winery to Mr. Dumbra until I be able to get the license in his name.

Q. The license from the Alcohol Tax Unit, and State authorities, is that correct? A. Yes.

(Testimony of Giulio Particelli.)

Q. So, now then, referring back to December, 1943, I will [62] ask you again, was there any modification of your agreement to sell them 275,000 gallons of wine? A. Modification?

Q. I beg your pardon. Did you change that agreement to send them a lesser quantity?

A. No, I sold everything I have in the winery.

Q. Everything you had? A. Yes.

Q. Well, did you take any wine out of that winery?

A. Yes, because I reserved the right to take some wine, when I sold the winery and wine to Mr. Dumbra. I tell him I want to take some wine, before I ship and everything to you, or when I give you the key for my own use and I still have a few barrels.

Q. How much wine was that?

A. Around 1,000 gallons.

Q. 1,000 gallons, exactly. Now, there was an adjustment of the price there, wasn't there, then, for that 1,000 gallons?

A. Same price paid me.

Q. Same price paid you? A. Yes.

Q. And what was that?

A. Same, ceiling price.

Q. 28 cents? A. Yes. [63]

Mr. Marcussen: If your Honor please, I would like to offer as Respondent's Exhibit L a record to Tiara Products Company from A. M. Mull, Jr., dated May 4, 1944, and so that your Honor may follow the testimony and the record here, I call

(Testimony of Giulio Particelli.)

your Honor's attention that Mr. Mull states in part in that letter, "You will recall that 1,000 gallons were withdrawn by Mr. Particelli prior to the closing of the deal and that the whole deal amounted to 274,000 gallons, with an adjustment to be made by Particelli in connection with the 1,000 gallons," and I think Counsel will stipulate that this is signed by Mr. A. M. Mull, Jr., and it came from the files of the Tiara Products Company.

Mr. Brookes: So stipulated.

The Court: Admitted, as Respondent's Exhibit L.

(Whereupon the document marked Respondent's Exhibit L for identification was received.)

Mr. Marcussen: Then, as Respondent's exhibit next in order, that is M, a carbon copy of a letter from the files of Mr. Mull, from Mr. Mull to Mr. Victor Dumbra, care of Tiara Products Company, Inc., New York, New York, and call your Honor's attention to a statement contained on the reverse side of that letter. "Mr. Particelli withdrew for his own use 1,000 gallons of wine." The date of that letter, if I didn't give it, is December 23, 1943, and I offer that as Respondent's Exhibit M. [64]

The Court: Admitted.

(Whereupon the document marked Respondent's Exhibit M for identification was received.)

Q. (By Mr. Marcussen): Now, Mr. Particelli, I hand you Respondent's Exhibit N, for identification, which is a carbon copy of a letter from Mr.

(Testimony of Giulio Particelli.)

Mull to Tiara Products Company, and call your attention to paragraph two of that letter. Can you read it? A. I can't read English.

Q. You can't read English? Then I will read it to you.

“You will recall the understanding that Mr. Particelli was to receive the sum of \$100 per week and on the basis of the agreement that he was there and the amount he demanded it would be 15 weeks, or \$1500. On account of this \$1500 you were given a \$1,000 credit, and I sent Mr. Fred J. Foster check in the amount of \$500 which closes this account out.”

Now, having read that to you, I ask you whether that refreshes your recollection as to whether or not you received \$100 a week for your services there. A. I forget how much it is.

Q. You forget, does that refresh your recollection at all?

A. I forget how much, he give me, I told him give me what you think is necessary.

Q. Does it refresh your recollection then that you [65] actually got \$100 a week?

A. I think so.

Q. You think so? A. I don't remember.

Q. Now, then, I ask you also whether the reading of that paragraph from this letter refreshes your recollection as to the amount of the credit that you gave to Tiara Products Company for the 1,000 gallons of wine that you withdrew?

(Testimony of Giulio Particelli.)

A. I—they give it to me for the ceiling price like I sold to him.

Q. That is what you say you got? A. Yes.

Q. And do you think then, would you say that Mr. Mull was mistaken?

A. I don't know, maybe mistaken.

Q. That you got a dollar a gallon, or that rather Tiara Products Company got \$1,000 credit?

A. I don't know, if it my mistake or Mr. Mull.

Q. But you say it's a mistake?

A. My mistake or Mr. Mull's.

Q. Yes.

Mr. Marcussen: I offer that in evidence as Respondent's Exhibit N, if your Honor please.

The Court: Admitted.

(Whereupon the document marked Respondent's Exhibit N for identification was received.) [66]

Q. (By Mr. Marcussen): If they offered you the \$1,000 you took it didn't you, Mr. Particelli?

A. We got to see what for they offer me, I don't take it if I don't know why.

Q. If they offer the \$1,000 you don't take it?

A. I don't take it.

Q. You wouldn't have taken it?

A. If I don't know what for they offer me.

Mr. Marcussen: If your Honor please, I would like to ask you whether this would be a good time to adjourn?

The Court: Well, we lose a little time. We

(Testimony of Giulio Particelli.)

usually go to 12:30 on these cases. Of course, if you can't proceed any further, we may have to adjourn.

Mr. Marcussen: I do want to check my files at the office for notes on the cross examination, and I apologize again, your Honor, for not having it with me.

The Court: We will adjourn until 2:00 o'clock.

Mr. Marcussen: Thank you, your Honor.

(Whereupon, at 12:00 o'clock a.m., a recess was taken until 2:00 o'clock p.m. of the same day.) [67]

Afternoon Session—2:00 p.m.

The Court: Mr. Particelli, will you take the witness stand? You may proceed with your cross examination.

Mr. Marcussen: Your Honor, before we proceed, I wonder if we may have a call of the subpoenas that were issued to the Tiara Products Company and to Mr. Dumbra of the Tiara Products Company. I understand there is a representative here.

The Court: Do you want to put him on the witness stand?

Mr. Marcussen: I thought perhaps it might be well to do that first and get that cleared up if your Honor thinks that is all right.

The Court: Well, if you want to suspend your cross examination here.

(Testimony of Giulio Particelli.)

Mr. Marcussen: We might wait until we are finished with the cross examination.

The Court: All right.

Mr. Marcussen: If your Honor please, before proceeding with the cross examination, I would like to move for an exclusion of the Petitioner's daughter and son-in-law from the courtroom.

The Court: All right, you have heard a good part of it already. The privilege of remaining has been revoked as to the son-in-law and daughter of the Petitioner. Remain outside of the courtroom out of hearing of the testimony here and [68] respond when you are called.

Mr. Marcussen: Mr. Reporter, will you read back the last question and answer of the morning session?

(The last question and answer were read by the reporter.)

Q. (By Mr. Marcussen): Now, Mr. Particelli, I hand you Respondent's Exhibit O for identification, which consists of a file of net worth statements. A. What?

Q. A file of net worth statements. Do you know what a net worth statement is?

A. Net worth?

Q. Yes. A. You explain to me.

Q. Consisting of 12 pages, and I ask you to look at each one of these 12 pages.

A. I can't read no English.

Q. You can read your signature, can't you?

A. Yes.

(Testimony of Giulio Particelli.)

Q. I want to know if your signature appears at the foot of each one of these pages?

A. That's mine.

Q. And the bottom one? A. Yes. [69]

Q. The next one? A. Yes.

Q. That one? A. Yes.

Q. That one? A. Yes.

Q. That one? A. Yes.

Q. That one? A. Yes.

Q. That one? A. Yes.

Q. That one? A. Yes.

Q. That one? A. Yes.

Q. That one? A. Yes.

Q. That one? A. Yes.

Q. Will you take a look at them, please, and tell me what they are?

A. I can't read English.

Q. You know what figures are, don't you?

A. I don't know what the figures mean. [70]

Q. What are those figures?

A. I can't read no English.

Q. I see. Well, did you file statements with the bank, telling the bank how much property you had, and how much money you owed? A. Yes.

Q. You did that?

A. Yes, Sebastopol Bank.

Q. And are these those statements, do you recognize these as the statements?

A. Recognize my signature there.

Q. How about these figures here? Can't you identify those as your statements?

(Testimony of Giulio Particelli.)

A. I don't make this here; I know I signed this.

Q. You just signed? A. Yes.

Q. What did you do, did you tell people what your property was and then——

A. No, told the bank.

Q. You went to the bank, did you?

A. For a loan of money.

Q. Yes.

A. I do business with him in the Sonoma Bank.

Q. And when you went to the bank to get loans of money—— A. Yes. [71]

Q. ——the bank asked you how much property did you have?

A. He know how much property I have.

Q. He would have to get that from you?

A. Yes.

Q. You knew how much you had when you went to the bank? A. Yes.

Q. You knew what you owned, what liabilities you had, what money you owed? A. Yes.

Q. And then you told him?

A. And also banker know.

Q. And do you recall that these statements were signed at the bank?

A. I signed the statements.

Q. Do you know whether they were signed at the bank when you had a discussion with the banker?

A. Most of them were signed by the banker.

Q. Wait a minute. What was your answer?

A. Most of them were signed in the bank.

(Testimony of Giulio Particelli.)

Q. Most of them were signed in the bank, but you say, "must have been signed?"

A. If the bank statement——

Q. Were they signed down there? A. Yes.

Q. When did you first crush grapes at your winery, Mr. [72] Particelli? A. What year?

Q. Yes, what year?

A. I started crushing grapes down to my ranch a little bit.

Q. You had a small crusher at your ranch?

A. Yes.

Q. Is that where your home is, at the ranch?

A. Yes.

Q. I think you testified something to the effect that you crushed about 15 to 18 tons?

A. Well, the first year, I crushed the ones I raised at the ranch. I don't think I bought nothing, I don't know.

Q. I see. When was the winery at Forestville which you sold to Tiara Products Company constructed, when did you finish it?

A. How big you mean the winery?

Q. No. When was it completed, when did you finish making it? A. 1943.

Q. 1943? A. Yes.

Q. When in 1943?

A. Well, before the crushing season.

The Court: That is not what you asked him. You want [73] to know when the winery was built?

Mr. Marcussen: Yes, he said before the crushing season.

(Testimony of Giulio Particelli.)

The Witness: The last building, 'cause I build it in three years.

Q. (By Mr. Marcussen): It took you three years to build it?

A. One year I built one section and next year other and in 1943 I built the fermenting room.

Q. The fermenting room? A. Yes.

Q. Now, was any part of that winery in operation then before 1943? A. Oh, yes.

Q. All right, then, how much—what part of it did you finish building in 1941?

A. The first concrete building.

Q. In 1941, a concrete building?

A. The cement block—

Q. Yes. A. Reinforced by steel.

Q. Now, was that the main building of the winery?

A. This is main building, the first building.

Q. Now, in 1941, then, you didn't operate—you couldn't operate it, could you? [74]

A. I crushing, I think, in '41.

Q. You did? A. Yes.

Q. Then you not only finished the main building, but you put in crushing machinery, is that it?

A. Yes. I don't know if it be finished time of crushing season; I forget if it finished, the main building.

Q. Did you crush any grapes at that winery in 1941? A. I forget, I can't tell.

Q. You don't know? A. No.

Q. Well, then, did you do anything else in that

(Testimony of Giulio Particelli.)

winery in 1941? A. I put up a tank.

Q. You what? A. Put up a tank.

Q. Oh, I am not talking about construction now. Well, I will finish with construction. In 1941, you testified, as I understand it, that you finished the building? A. Yes.

Q. That you put in this crushing machinery in there?

A. I don't know if I put it in in 1941, if I be through in 1941, I don't remember if I crushed there in 1941.

Q. You don't remember that?

A. I don't remember if I crushed here or in the one at [75] home, I don't remember.

Q. You put in the crushing machinery, began to put in the crushing machinery in 1941?

A. Yes, the first year I build.

Q. Yes, the first year. When did your building operations begin in 1941, what month?

A. I can't tell.

Q. You don't know whether it was the winter, summer, spring or fall, is that right?

A. I forget what month, I no remember.

Q. Would you know what season of the year?

A. You mean when I started building?

Q. Yes.

A. First I have—I have to fill up the ground first because it's too soft down there, and I think I started building in the summertime some time.

Q. You think in the summertime?

A. In the wintertime impossible because there

(Testimony of Giulio Particelli.)

is water down there, I bought this land.

Q. This land that you are talking about, is that the fill-in land that you are talking about?

A. Yes.

Q. You had to fill in?

A. Fill in by rock.

Q. With rock? [76] A. Yes.

Q. And your best estimate is then that it started in the summer of 1941?

A. I think it was started around the springtime or summertime, I forget.

Q. Springtime. All right. And you built the main building, and you put a roof on it, I take it?

A. Yes.

Q. And in the year 1941 you started, at least, putting in the crushing machinery, is that right?

A. I don't want to say sure, I don't know if I crush there in 1941 or if I crush in ranch.

Q. I see. Entirely apart from where you crushed at the plant—

A. I don't know if I crushed there.

Q. In 1941, tell me, did you install the crushing machinery in 1941?

A. Maybe I install the crushing machinery, I don't know if I crushed there?

Q. Well, the answer is that you don't know. Then, entirely apart from that, what other installations—machinery, tanks and such did you put into that building in 1941, if any?

A. I just put in tank.

Q. What kind of a tank?

(Testimony of Giulio Particelli.)

A. A redwood tank. [77]

Q. One redwood tank?

A. I don't know how many I put in, I put in little by little.

Q. I see. Little by little. How long did it take you to put in the redwood tank?

A. I can't buy no redwood tank, nobody selling redwood tanks, the Government taken over all redwood tanks. I bought pretty near all secondhand tanks.

Q. And were all of your tanks constructed out of old, secondhand materials, then?

A. Secondhand tanks.

Q. You just moved in the old, secondhand tank?

A. You tore them down and put them up again, you can't move all the tank.

Q. What is the storage capacity of the tanks?

A. 3,000 gallons, one is 5,000, one is 12,000.

Q. Can you tell the Judge how high that is?

A. Building?

Q. No, the tank.

A. About 10 feet, 12 feet, 8 feet.

Q. And how much in diameter?

A. It depended on how many thousands, it goes by how many thousands.

Q. What was the largest tank you had?

A. It's a 19,000 gallons. [78]

Q. 19,000?

A. 19,000 and a few hundred, I forget the exact gallons.

Q. And how many tanks in total did you have?

(Testimony of Giulio Particelli.)

A. I can't tell you because I have a lot of small tanks.

Q. Well, you mean to tell me you don't have any idea how many tanks you had at the winery which you operated?

A. I can't tell how many tanks I have, because I have a 100,000, some 700 gallons, some is 500 gallons, up to 19,000.

Q. Do you recall whether you did any crushing in the winery in 1942?

A. I can't tell, I forget, I don't know, I don't want to say for sure.

Q. Is there anybody in your family that knows?

A. You can ask my daughter.

Q. Do you know whether she knows?

A. She knows just as much as I know, because she keep the books, she the one that makes the form, selling all the tubes.

The Court: What year did you commence crushing grapes?

The Witness: What year I started crushing grapes?

The Court: Yes.

The Witness: I think in 1935.

The Court: Approximately '35. What year did you start crushing grapes in your winery?

The Witness: I have a winery down there in my home, a little small one. [79]

The Court: All right.

Q. (By Mr. Marcussen): I think you testified that you had a little winery at your ranch, is that

(Testimony of Giulio Particelli.)

what you mean? A. Yes.

Q. And that is the winery you referred to when you told the Judge you started crushing in 1935?

A. Yes, I think 1935—1936, I started—have a bond permit by the Government to crush.

Q. Yes, right around that time. By the way, how large was that winery?

A. I have a fermenter room in the yard, and I keep all the wine below my house, and the capacity all together, a small tank, I think about 32, 33,000 gallons.

Q. That was your complete storage capacity.

A. In my ranch.

Q. And it was under your house?

A. Under my house.

Q. Where was the crusher?

A. It's down in the yard, I built a little shack, simple, and I fermented down there; oh, about 50 feet away or 60 feet from the house, and I—when I make the wine, I pump it to below my house by pump, the little pump which used air forced power.

Q. And you say you think your total storage capacity of [80] that winery was about 30,000 gallons? A. A little over, 32, 33,000.

Q. Did you crush in that winery every year that you had it, beginning with 1935 or '36?

A. When I started crushing, crushed a little bit every year.

Q. Right up to 1943? A. 1943.

Q. And did you do it in 1944 too? A. No.

Q. You still had it?

(Testimony of Giulio Particelli.)

A. I sold the grapes.

Q. You sold your grapes in 1944?

A. Yes.

Q. But you still had the winery in 1944?

A. I had nothing in my ranch no more, because I move everything to Forestville; when I build the new one in Forestville, I move everything from my ranch down to the new one.

Q. When you constructed the winery which you sold to Tiara Products Company, did you dismantle your winery on the ranch and move the equipment to that winery?

A. There is a long time before I moved.

Q. Didn't you testify this morning that you sold this ranch a year and a half after you sold the winery to Tiara? A. Yes. [81]

Q. And on that ranch was this small winery that we are talking about?

A. It was no operatable.

Q. It was there? Just answer my questions, Mr. Particelli, and I think we will get this clear.

Mr. Brookes: May I object; I don't think that this witness should be harangued or abused, and he will be confused by the fact that he has already given Mr. Marcussen a completely direct answer to the question and he will think Mr. Marcussen is asking him another question because he will not assume that Mr. Marcussen has not understood the answer.

Mr. Marcussen: May I ask what your understanding of his answer to be?

(Testimony of Giulio Particelli.)

Mr. Brookes: He told you some time ago, a few questions ago, when he built the winery at Forestville he moved the winery equipment that was in the basement of his house down to the Forestville winery.

Mr. Marcussen: By Forestville winery, do you refer to the winery that is the subject of this litigation, the sale to Tiara?

Mr. Brookes: Perhaps if you ask the witness that, you would find so did he.

Mr. Marcussen: I will have to start over, then; I don't mean to harangue the witness. I don't understand his language very well and perhaps he doesn't understand me. [82]

Q. (By Mr. Marcussen): Now, if you don't understand any of my questions, Mr. Particelli, will you say so, so that I may repeat it? A. I try.

Q. You try to do that?

A. I ask you a couple of times if I don't understand.

Q. We will all want you to do that, if you please. Now, referring to the small winery that you had on your ranch where you lived, in which you started crushing grapes at around 1936 or 1935, did you move that winery equipment into the winery at Forestville which you sold to Tiara? A. Yes, sir.

Q. You did? A. Yes.

Q. Do you remember when you moved it?

A. No, I don't remember.

Q. But it was before the sale, wasn't it?

A. Oh, yes, couple of years before.

(Testimony of Giulio Particelli.)

Q. Yes. Now, when did you first start crushing in the Tiara Winery?

A. You ask me before, I say 1941, and I forget, I don't know if I crush there in 1941 or if I started in 1942.

Q. But you are sure that at least you were crushing in '42, is that correct?

A. In 1942, yes. [83]

Q. Now, how much did you crush there in '42?

A. I can't tell, my daughter keep the books.

Q. Do you know whether your daughter knows?

A. Well, you can ask her, she keeps the books.

Q. Haven't you talked that over with her before you came up here in this trial?

A. Me and the daughter, we don't talk for four years, after I divorce her mother, and the first time we meet here this morning in the court and outside.

Q. Did you have any conference with her in your counsel's office?

A. Just yesterday, we meet, my attorney, me and the daughter.

Q. Then it wasn't true that you met her for the first time in the courtroom?

A. What?

Q. The statement was there——

A. We never talked together.

Q. You didn't talk to her in Mr. Brookes' office, is that what you meant to say?

A. He asked some questions to me and asked some questions to my daughter; I don't talk to her.

Q. You didn't ask your daughter to come and

(Testimony of Giulio Particelli.)

testify on your behalf in this case?

A. No, I never asked, she is interested just as much as [84] me is because she is interested in one-half of the property.

Q. Is she the beneficiary of your former wife's will?
A. Yes, I think so.

Q. Do you have any idea at all how many grapes you bought in 1942?
A. No.

Q. Do you say to the Court that you can't remember whether you bought 100 tons or a thousand tons?

A. I can't tell how many tons I crushing.

Q. How long would it take you to crush 100 tons of grapes?

A. Oh, depend on what kind of machinery you have.

Q. Well, your machinery?

A. My machinery takes about 4, 5 days.

Q. 4 or 5 days; how many days did you crush?

A. Oh, we don't crush steady.

Q. I don't say that, I realize that, but how many days in the 1942 crushing season did you crush about?

A. I don't know, the sun is coming one time, we crush; maybe the whole day it don't come any more. I don't keep the books; my daughter keep the books how much we crush.

The Court: Who did the crushing?

The Witness: I did the crushing.

The Court: You know about how often you crushed, don't you? [85]

(Testimony of Giulio Particelli.)

The Witness: Like I say, sometimes a couple of hours in the—sometimes the four, five trucks come the one time.

The Court: Who bought the grapes?

The Witness: I did.

The Court: Can't you remember about what quantity of grapes you bought?

The Witness: I can't tell exactly how many ton.

The Court: We are not asking exactly, but just give your best estimate of it. Did you buy great quantities or small quantities?

The Witness: I think we make over 100,000 gallon of wine, I don't know how much wine we make in 1942.

Q. (By Mr. Marcussen): But you think it's over 100,000 gallons?

A. I think so, I don't want to be sure, but I think so.

Q. Now, Mr. Particelli, I want to make it clear that when I ask these questions, I don't—I want the substantial truth, I am just asking you generally how much. You see, when I ask you a question—you said a minute ago when I asked you, you didn't know whether you had crushed a hundred tons of grapes or a thousand, and now you say that your best estimate is that you crushed, you got 100,000 gallons, isn't that right?

A. You no ask me how many gallons of wine I make, you [86] asked how many ton I crushed.

Q. Yes, do you know how many gallons of wine on the average you get out of a ton of grapes?

(Testimony of Giulio Particelli.)

A. 150, 155.

Q. Now, that 100,000 tons, more or less, you can't be any more specific about that than that, is that correct? A. No.

Q. I beg your pardon, 100,000 gallons; Counsel corrects me. Now, when did you sell that?

A. I sold little by little.

Q. Beginning when?

A. Well, beginning couple of months after we make, you know. We can't sell the bottles like I said before. We have to sell from bulk, in barrels, because we have no machinery to finish, and I sold for cheaper wine.

Q. Did you move any tanks into that winery in 1943? A. If I move any tanks?

Q. Yes.

A. I bought some more tanks in 1943, yes.

Q. About how many, and how many gallons of storage capacity?

A. I think I put up about 150,000 gallons in 1943. The exact amount of the gallons I don't know.

Q. Then when did you—I think you testified that you carried over from the 1942 season? [87]

A. A little bit.

Q. A little bit. What do you estimate as a little bit?

A. Well, I don't know if it would be around 15 or 20,000 gallons, I forget how many thousand gallons.

Q. Would it be 30,000 gallons?

A. I don't know.

(Testimony of Giulio Particelli.)

Q. Approximately?

A. I don't know because I don't keep the books, my daughter keeping the books, you see.

Q. Your daughter knows about that?

A. Must know, she keep the books.

Mr. Marcussen: If your Honor please, I have just spoken with Counsel about a stipulation which we would like to make at this time, or rather I would like to make. I would like to ask Counsel to stipulate that in a sworn protest, submitted by this taxpayer and signed by him, and verified by him, there appears the following statement, "During the fall of 1943, the taxpayer produced 244,532 gallons of raw wine, all of which was sold under the contract of sale entered into on December 6, 1943. The balance of the 275,000 gallons sold, namely, 30,468 gallons was old wine produced in 1942 and prior years."

Do you so stipulate Counsel?

Mr. Brookes: I stipulate that that sentence is here in the protest and that the protest was signed by Mr. Particelli.

Mr. Marcussen: And verified? [88]

Mr. Brookes: And verified by him.

Q. (By Mr. Marcussen): Did you carry over any wine from the 1941 crush, if any, to 1942?

A. I don't know, I don't remember.

Q. I think you testified a minute ago you don't remember when you started crushing in the winery in '41?

A. No.

Q. I will ask you whether you carried over—

(Testimony of Giulio Particelli.)

I will ask you whether or not in 1941 you did any crushing at the small winery at the ranch?

A. I do, if I don't do in Forestville, the new wine, I crush at the old winery, but I can't tell exactly if I crush there or in Forestville because I don't remember.

Q. Did you carry over any of the wine that you may have crushed in the small winery in 1941?

A. I don't think so, just a little wine.

Q. You think you sold that all off?

A. I think so, I don't want to be sure, just a little bit left.

Q. Now, did you crush in your small winery in 1942? A. No.

Q. You did not crush in that winery?

A. No, no the small one, no.

Q. In '42. Now, referring to the wine that you crushed [89] in the big winery, that is the one you sold to Tiara, you state that you began selling that a few months after that was crushed, is that correct?

A. No, in '43, I never sold one gallon for the 1943 wine until I sold to Tiara.

Q. Now, I am talking about the 1942 crush.

A. The 1942 crush, two or three months after we started selling a few.

Q. You started selling a few gallons?

A. Yes.

Q. And when was your last sale, do you recall?

A. No.

(Testimony of Giulio Particelli.)

Q. Over a period of how many months did you sell that?

A. We sell a little every week.

Q. 70,000 gallons?

A. We sell a little bit every week.

Q. Every week? A. Every week.

Q. And did those sales continue right up until you began crushing in 1943? A. Yes.

Q. And how did you sell it, did you sell it in bulk?

A. I do sell, I think, few thousand gallons in bulk in the east.

Q. And you shipped that by tank car, did you?

A. Tank car.

Q. Do you recall the size of those tank cars?

A. Well, tank car is 6,000 up to 8,000.

Q. Yes. Can you estimate approximately when you sold those tank cars in the east?

A. I forget what month.

Q. What season of the year in 1943?

A. Oh, I can't tell, in the wintertime or springtime, or summertime, I can't tell; I don't remember.

Q. Now, the wine that you would ship in tank cars, that would be finished wine, would it?

A. No.

Q. You did not finish any wine?

A. I just rack it a couple of times and filter a couple of times but no put in bottle, I ain't got no—I don't have any machine.

Q. I am not talking about bottling in gallons,

(Testimony of Giulio Particelli.)

I am talking about tank car shipments to the east in 1943, prior to the 1943 crush.

A. I just filter the wine and rack.

Q. It was racked, you say?

A. And filtered.

Q. How many times was it racked?

A. Two, three times.

Q. That is part of the finishing process, isn't it?

A. You have got to do something else if you want to finish.

Q. But that is how you start finishing the wine, is to rack it, isn't that correct?

A. You don't call it finish.

Q. Not completely finished, but that is part of the finishing process, is it not?

A. Start the rack is what you call part of the finish.

Q. Now, whom did you sell that wine to in the east? A. I think I sold to Sun Set.

Q. You mean the sun that shines in the sky?

A. My daughter can tell you exactly what company and what state and what town, I forget, I think Ohio, Sun Set Wine.

The Court: Sunset Winery, Toledo, Ohio?

The Witness: I think so; I don't want to be sure.

Q. (By Mr. Marcussen): What did you sell that wine for?

A. I forget how much I sold it.

Q. Several tank cars, and you forget the price, in 1943? A. I forget how much I sold it.

(Testimony of Giulio Particelli.)

Q. Do you have any idea at all what you sold that wine for?

A. No, I don't know if I sold 35 or 40 cents, or 28 cents.

The Court: He wants to know what price you got. [92]

The Witness: Yes, I know, I forget.

Q. (By Mr. Marcussen): You don't know whether it was 25 or 38? A. No.

Q. Now, I think you testified that you had a little bottling plant and that was at your small winery, was it?

A. No, not there, far away from the winery, down in Forestville.

Q. Down at Forestville?

A. About 300 feet away from the winery.

Q. Away from which winery, the big one or small one? A. The big one.

Q. Was it near the small one?

A. The small one is down at the winery in the ranch about a mile and a half away.

Q. I see. Was the bottling plant part of your store facilities there? A. Yes.

Q. At the store? A. Yes.

Q. Now, you testified this morning, Mr. Particelli, to wine that you purchased, as I recall, from Italian Swiss Colony, from Petri, from Geyserville Growers, and I think you testified that wine was all purchased for bottling purposes, is that correct?

A. Yes.

Q. Do you have a tax paid room at the big

(Testimony of Giulio Particelli.)

winery which was sold to Tiara? A. No.

Q. Where were the deliveries of this wine that you purchased made? A. Down at the store.

Q. At the store? A. Yes.

Q. And that was all tax paid wine when you received it, wasn't it?

A. In the store, also I bought and sell wine in bulk.

Q. You bottled some wine in bond?

A. I bottled some wine for Italian Swiss Colony in bond, and they go down and put it in storage.

Q. About how much did you—

A. —I don't know how many.

Q. Well, now, approximately.

A. Well, I can't tell, because I no bought it all at one time.

Q. Was it a hundred gallons?

A. Oh, more.

Q. Was it a thousand?

A. I think more than a thousand because when we buy this bond— [94]

Q. Was it a hundred thousand?

A. No, no.

Q. Was it fifty thousand?

A. I can't tell you exactly, I know more than one thousand because if it be just one thousand it don't pay to have all this trouble to buy in the bond.

Q. Was the bottling plant under bond?

A. Bottling plant what?

Q. Was your bottling plant, this little installation near the—at the store—was that under bond?

(Testimony of Giulio Particelli.)

A. I have license, yes.

Q. You have a what?

A. We have a bottling license.

Q. Bottling license? A. Yes.

Q. But was it under bond?

A. No, because everything tax paid there.

Q. Everything tax paid?

A. Everything we keep there is tax paid.

Q. And the bottling that you did on account of other people, that was tax paid wine, is that correct?

A. Wine comes down to the bottling place is all tax paid.

Q. Did Petri and Italian Swiss Colony and Geyersville and the people that you bottled for, did they just pay you for the bottling, is that correct? [95]

A. No, I bottled myself.

Q. You bought it yourself?

A. I buy the wine.

The Court: You said you bottled some for other people, as I understood?

The Witness: The—below my label, below my name.

Q. (By Mr. Marcussen): Now, the question I was just about to ask you; what did you mean, Mr. Particelli, when you said that you bottled wine for other people, that is for Italian Swiss Colony and Petri?

A. Italian Swiss Colony, if you want to sell our wine, you buy wine for the company, and we also furnish the label, name Italian Swiss Colony, bot-

(Testimony of Giulio Particelli.)

tled by Lucca Winery, Forestville.

Q. And when that wine was all bottled by you, did you own it?

A. Yes, because I buy in 50 gallon barrel and 25 gallon barrel.

Q. And then you owned the wine? A. Yes.

Q. You didn't ship it back to the Italian Swiss Colony? A. No.

Q. Did you buy bottled wine from Italian Swiss Colony? A. Yes.

Q. Were their labels already on it? [96]

A. Yes, Tipo Chianti, Burgundy.

Mr. Marcussen: Now, if Your Honor please, I have in the courtroom Mr. Cerruti, who is an Internal Revenue Agent of Italian extraction, and he informed me that he is familiar with the language that Mr. Particelli would have spoken in Italy, or the Italian language. I wonder if we could ask Mr. Particelli to say something in Italian and if I may ask Mr. Cerruti if he understands him, and then possibly, if Counsel is agreeable and Your Honor is agreeable, have Mr. Cerruti sit over here and listen and possibly give me the answer, subject to any inquiry that Counsel would want to make from time to time?

Mr. Brookes: I can't stipulate to that because Mr. Cerruti has been identified as an Internal Revenue Agent; he is not a disinterested party, and I don't speak Italian nor do I understand it. I will make this suggestion, Mr. Particelli's daughter has told me that they spoke Italian in the household

(Testimony of Giulio Particelli.)

when she was brought up there, and she speaks Italian and understands it, and I—I mean Mrs. Guerrazzi, I mean Mr. Particelli's daughter. She undoubtedly understands her father's language better than, or certainly as well as, this gentleman. If they cross-check each other, I will have no objection to it.

Mr. Marcussen: If Your Honor please, I want to state that Mr. Cerruti has had nothing to do with the preparation of this case. I think it could be said safely that he is not an [97] interested party in any way. He will not be called as a witness. Mrs. Guerrazzi will be called as a witness in this matter and I noted this morning, if Your Honor please, the reason I made the request that she be excluded from the courtroom was that in answer to almost all of the questions that were put, Mr. Particelli would look to his daughter before making an answer, and I felt under the circumstances I would have to make a request to have her excluded from the courtroom, and I merely make this suggestion if it will speed up the proceedings and assist Your Honor.

The Court: If he is not willing to have a government official to act as an interpreter, I think I wouldn't feel like forcing him to do it.

Mr. Marcussen: Very well. May I ask whether Mr. Cerruti may not be seated near the reporter and near the witness chair, and may I ask to consult Mr. Cerruti?

The Court: You will not ask the questions in Italian?

(Testimony of Giulio Particelli.)

Mr. Marcussen: No, but he would understand Mr. Particelli's English. I realize that Mr. Particelli is making every effort.

The Court: Why not sit there?

Mr. Marcussen: Can you hear just as well here?

Mr. Reporter, will you read the last question and answer? [98]

(The last question and answer were read by the reporter.)

The Court: Tipo Chianti?

Mr. Brookes: He said Tipo Chianti.

Mr. Marcussen: I suppose I am a Californian by now and I, therefore, must apologize.

Mr. Brookes: You are not a native?

Mr. Marcussen: I am not a native.

Q. (By Mr. Marcussen): Did you testify this morning that you purchased some wine for blending purposes? A. Blending?

Q. Yes.

A. I never sell wine for blending.

Q. Well, I asked you if you ever bought any for blending.

A. Oh, yes, yes, I bought some for blending.

Q. About how much in 1942 and '43?

A. I don't know how much. We bought.

Q. Did you buy any in 1942?

A. Yes, I bought some.

Q. For blending? A. Yes.

Q. Did you have enough tanks in your winery at that time? A. Oh, yes.

Q. What would you estimate was the extent of

(Testimony of Giulio Particelli.)

your purchases for blending in 1942? [99]

A. Well, they give you better test than my wine, put some finish wine inside.

Q. I didn't ask you the reason for that, I asked you how much wine did you buy on the outside for blending purposes in 1942?

A. I can't tell how much I bought.

Q. Do you have any idea at all?

A. I forget, it's a long time ago, seven years ago.

Q. By September, 1942, how much storage capacity did you have in your main winery, and by the main winery, when I say that, I mean your large winery that you sold to Tiara. Now, by September, 1942, what would you estimate was the storage capacity of your tanks there?

A. Pretty close to 200,000.

Q. 200,000?

A. Pretty close there, I don't know exactly, I can't tell exactly.

Q. But I think you only crushed about 100,000 in grapes in 1942?

A. I don't want to say, I don't want to insist how much I crushed—

Q. At the end of 1942, were your tanks full?

A. Oh, no, I have a lot empty.

Q. About how many, what estimate, the best you can, you don't have any recollection? [100]

A. No, I don't remember. I can't say, one or two thousand gallons, three thousand gallons.

Q. You don't know whether you had in Decem-

(Testimony of Giulio Particelli.)

ber of 1942, you can't tell the Court whether your tanks were 50 per cent used or filled up with wine, or, rather, 50 per cent of your tanks by capacity were filled up with wine, or 70 per cent, or 60 per cent or——

A. I think around 50 per cent would be filled up. I don't want to say for sure how many thousands.

Q. Well, your best estimate. About 50 per cent?

A. Maybe 50 per cent would be full, I don't know.

Q. Now, do you know what your purchases, total purchases, of bottled wine were in 1943?

A. How much you mean paid for?

Q. No, what is the total amount that you purchased in 1943, approximately, from Italian Swiss Colony? A. No, I can't tell.

Q. Remember you said you bought some with the label on it?

A. I can't tell how much it was we bought.

Q. Was it a small quantity?

A. We bought a lot of wine from Italian Swiss Colony, we more than anybody else.

Q. In 1943? A. In 1943, and 1942. [101]

Q. Both in bulk——

A. ——and in case.

Q. ——and in case? A. Yes.

Q. Was most of it in case?

A. No, most of it in bulk.

Q. Mostly in bulk?

A. Yes, and I think I bought some in bond.

(Testimony of Giulio Particelli.)

Q. If it was in bulk, it would all have to be in bond, wouldn't it?

A. I think so; bought some in bond besides in bulk, you know when you buy in bond you don't need to pay tax. You pay the tax when we sold, and instead of bringing it down in the bottling plant, I put it down in my tank in the winery, and when I go there, to the bottling plant, also we got to put a stamp on the bottle.

Q. And I think you testified that you never bottled anything of your own product?

A. I said in 5 gallon demijohn and 10 gallons and barrels and 25 gallons.

Q. I am talking about bottling. You don't call that bottling, do you? A. No.

Q. Now, this store that you operated, you said, I think, that the bottling plant was right there at the store? [102] A. Yes.

Q. And that was in Forestville?

A. In Forestville.

Q. And your sales there were in retail, were they?

A. In the same building by the bottling place, we had a little room separate there, what we call a retail store.

Q. Yes, and did you make any wholesale sales?

A. No, no.

Q. All retail?

A. In the store there, in the little store, it was all retail. Gallons, bottles.

Q. You didn't have the fortifying room at the

(Testimony of Giulio Particelli.)

main plant, did you? A. No.

Q. Referring to the wine that you sold in 1943, your own wine that you made, I think you testified that you sold it a few thousand gallons a month and that continued more or less throughout the year until the 1943 crushing began? A. Yes.

Q. And in how large a quantity would you sell that wine, I think you testified that some of it went out in tank cars? A. Yes.

Q. About how many tank cars did you ship?

A. I forget how many tank cars. We sold just one time this tank car. I forget how many tanks. Only time we sold it [103] in tank cars.

The Court: You just sold to one particular winery in tanks?

The Witness: Yes.

The Court: That was the Toledo, Ohio company?

The Witness: The Sunset Wine, that is the only time I sold in bulk.

Q. (By Mr. Marcussen): Was that Toledo, Ohio, did you say?

A. It's at a name, my daughter know the town, it's Ohio, I think.

Q. Was it one of the big cities, do you know?

A. No, it's called Sunset Winery.

Mr. Marcussen: If Your Honor please, Counsel and I have had a further discussion about the possibility of using Mr. Cerruti to assist. We don't know much Italian language and I don't know that the reporter understands, and I am certainly quite concerned as to whether the reporter is getting this

(Testimony of Giulio Particelli.)

as it goes in. Mr. Brookes tells me that he would be quite willing to have Mr. Cerruti sit up there, and if we could both get up there, if Mr. Cerruti would make a statement in English as to what the answer was, we could go in and begin that way subject to, that is, agreement of both Mr. Brookes and myself as to what it was.

Mr. Brookes: I have no objection to that. My [104] objection before was that I did not wish to be bound by the translation of anyone who is in the position, I insist, of being not a disinterested person, and there is no personal reflection on Mr. Cerruti intended, but he is an Internal Revenue Agent. But, if he asks the witness questions in English, paraphrasing what Mr. Marcussen has asked—by now I have learned to understand Mr. Particelli very well, and I can feel protected then. The question will be asked in English and the answer in English, if it will help, if it will expedite matters.

The Court: Well, then, is that just—you want him sworn as an interpreter?

Mr. Marcussen: I didn't have that in mind unless the counsel would like to have him. We might swear him, yes, I would be very happy to have him sworn.

Mr. Brookes: If the Court is at liberty to admit Cerruti as co-counsel for the purpose of this case, that would perhaps suffice. Then he could ask the question that Mr. Marcussen wanted him to ask, and he could ask it in English and it would appear as asked by him in the record.

Mr. Marcussen: No, I don't think you are clear.

(Testimony of Giulio Particelli.)

I am not concerned with whether the witness—I am concerned whether the witness understands my questions; for the most part I think he does, and I think if he get his answers, we [105] will be able to ascertain whether he understands my question or not. The thing that I have in mind that is of paramount importance is whether or not the reporter is getting a correct statement of Mr. Particelli's testimony. Now, the last answer, I certainly didn't. Now the reporter is going to repeat the last question, Mr. Particelli, and then I would like to have you give your answer, and then I will ask Mr. Cerruti to state in English—I beg your pardon, it's no reflection, I realize you are talking English too, but to repeat in English what you said, and then I want to ask you whether he repeated it correctly.

(The last question and answer were read by the reporter.)

The Witness: Yes.

Mr. Marcussen: We will proceed, then.

Q. (By Mr. Marcussen): Do you think you might have shipped 10 tank cars?

A. No, no 10 cars, I don't think so.

Q. Would it be close to 5, do you think, according to your best recollection?

A. Well, I forget how many thousand car—gallons I sold for this Sunset Winery. If it be 50,000 gallons sold, I know I sold only one time.

Q. Only at one time?

A. Only one time, to this particular winery.

Q. Do you know whether that was sold prior to

(Testimony of Giulio Particelli.)

June of [106] 1943, or prior to July of 1943?

A. I can't tell the month. I know I sold in tank cars and I think I sold around 50 60,000 gallons. I don't want to be sure, because I can't say what month.

Q. But it's approximately 50 or 60,000 gallons?

A. Maybe more, I don't know.

Q. It may be more, you say?

A. It may be more or less. It's the only time I sold.

Q. You don't think it would be any less, do you?

A. I don't think so.

Q. Now, what was the price at which that was sold?

A. That I forget.

Q. Now, when you went to the bank from time to time, to tell them about what property you had, did you tell them as accurately as possible?

A. Well, I tell them the property, where it is located. They know all my property.

Q. Well, what about wine, if you had wine on hand, you would tell them how much you valued the wine, is that correct?

A. I can't tell them the value because the wine is up and down. I tell them how many gallons I have in hand.

Q. Did you tell the bank what you expected to sell your wine for from time to time?

A. I can't—

Q. Pardon? [107]

A. I can't tell how much I sell it, we don't know

(Testimony of Giulio Particelli.)

the price how much it going to be, to go up or to go down.

Q. If you sold some wine to the Sunset Company in Ohio, in 1943, in tank cars, you would tell them, I suppose, what price you sold it at, wouldn't you?

A. Well, the money is coming to the bank there.

Q. The money would come right into the bank, would it? A. Yes.

Q. You sold it on a bill of lading, did you?

A. Yes.

Q. Is that it? A. Yes.

Q. And did you get a draft on the bank of the purchaser?

A. I think so. You ask my daughter, I think so.

Q. You know what a draft is, don't you, a bank draft? A. I think so.

Q. You know what that is?

A. Well, payable to the bank.

Q. Did you—when you shipped some wine, you sent it with a bill of lading, and did you put a draft with the bill of lading and have the purchaser accept the draft?

A. No, think they are going to send the money after.

Q. What do you mean?

A. After they receive the wine, I don't know. I think the contracts—the way they work. [108]

Q. But before they get the wine, they have to sign the draft, is that correct?

A. I think so. I don't know, I no much in business to ship wine. My daughter—

(Testimony of Giulio Particelli.)

Q. But picture the situation now, Mr. Particelli. You are selling them some 50 or 60,000 gallons of wine. You just never shipped out wine?

A. I know to ship one tank at a time.

Q. But you didn't ship it out without protecting yourself on the price, did you? A. No.

Q. In other words, you had the purchaser either pay for it, or accept a draft, didn't you, to give you a promise to pay for it?

A. Promise to pay each carload we sell.

Q. As they get it, is that correct?

A. Yes, and they paid for it.

Q. And then the papers were sent to your bank, were they? A. I think so.

Q. And then when would you get the money?

A. I think right away.

Q. Right away? A. I think so.

Q. And then when you sold this lot of wine in tank cars, if you had sold any of that, would you tell the bank about it? [109]

A. I put all the money there, we receive is go to the bank.

Q. And if there was some that you hadn't received, you told the bank what price you were getting for it and how much it was worth?

A. I don't know if I told them the price. I deposited all the money I collected.

Q. Well, you didn't get it. You said a moment ago that money came to the bank? A. Yes.

Q. For your account, isn't that correct?

A. Yes, some come for myself directly.

(Testimony of Giulio Particelli.)

Q. Some come directly?

A. Directly, I think so.

Q. Was that a requirement of the bank that you had some of it come right from the bank to pay off loans?

A. I have a loan at the bank, and I was supposed to pay so much a gallon, each gallon of wine I sold I would—was supposed to pay so much a gallon to the bank.

Q. And now, with respect to the wine that you still had in storage at the winery, when you made out the statements to the bank, didn't you ever tell them what the wine was worth?

A. The bank never asked me how much wine was worth.

Q. Did they know?

A. I don't know if the bank—never asked me nothing. [110] They go by the marketing price.

Mr. Marcussen: If Your Honor please, at this time I would like to ask permission of the Court to, on behalf of both myself and Mr. Brookes, to withdraw exhibits that are submitted in evidence, after the conclusion of this case for the purpose of substituting photostatic copies or for the purpose of making copies, and return the ones that were submitted, as we have been unable to get all of this copy work done before this trial. I shall be glad to stipulate with Counsel if that permission is granted, I will withdraw any of the exhibits submitted on behalf of Respondent at his request so that he may have a copy, and I think Counsel will stipulate with

(Testimony of Giulio Particelli.)

me that he will withdraw any of his so that I may have a copy so that we may not be required to ask permission from time to time with the possibility that we might skip one. I wonder if we couldn't have that understanding?

The Court: Does that cover the exhibits in the stipulation also?

Mr. Brookes: Those are in sufficient number already.

The Court: You may have that permission as to all exhibits offered in evidence by either the Respondent or the Petitioner.

Mr. Marcussen: Thank you, Your Honor.

The Court: We will take a recess.

(Whereupon a recess was taken.) [111]

Mr. Marcussen: Mr. Reporter, will you read the last question and answer, please.

(Last question and answer were read by the reporter.)

Q. (By Mr. Marcussen): I want to repeat my question. Did you ever tell the bank what your wine was worth that you had on hand at the time that you made the statements to the bank?

A. I don't remember I tell any price to the wine.

Q. You don't remember?

A. No, I don't make any statement as to how much the wine was worth.

Mr. Brookes: Your Honor, may I request that the reporter be instructed to read the question

(Testimony of Giulio Particelli.)

and the answer to Mr. Marcussen, Mr. Marcussen's first question and the answer that he understood that the witness gave?

The Court: You mean the one just before the last one?

Mr. Brookes: Yes.

(The question and answer referred to were read by the reporter.)

Mr. Brookes: Your Honor, I am satisfied that the reporter correctly got the answer.

Mr. Marcussen: If Your Honor please, I offer in evidence Respondent's Exhibit P for identification, which I ask Counsel to stipulate is a typewritten copy of a net worth [112] statement filed by the Petitioner with the Bank of Sonoma County, I believe it is, is that correct?

Mr. Brookes: Yes, that is correct.

Mr. Marcussen: On July 7, 1943, and I ask Counsel to stipulate that that statement is a true copy of a similar statement appearing in Respondent's Exhibit O for identification, which are the originals bearing the signature of Mr. Particelli.

Mr. Brookes: I stipulate to that as a true copy of the original appearing in file identified as Exhibit O.

The Court: It is a photostatic copy?

Mr. Marcussen: Yes, it's a photostatic copy of another typewritten copy, not of the original.

The Court: I see.

Mr. Marcussen: It's a conformed typewritten copy, and I call Your Honor's attention to the fact

(Testimony of Giulio Particelli.)

that listed among the assets is an item, 2 cars wine, rolling, and that the value placed thereon is \$12,000, and also to another item thereon, which is 105,000 gallons of wine, valued at \$84,000.

The Court: That is that it be admitted in evidence? You are offering it now? Is there any objection?

Mr. Brookes: I have stipulated that is a copy of the original. Do I understand Counsel is offering the entire sheaf of documents there which he has already identified as an Exhibit O? [113]

Mr. Marcussen: No, I merely identified the exhibit which is now offered, namely, Exhibit P for identification as a copy, the true copy, of one appearing in Respondent's Exhibit O, for identification, which has not been offered in evidence.

Mr. Brookes: And I have stipulated that is a true copy of the original which appears in there.

Mr. Marcussen: Yes, and which was identified, this having been identified by Mr. Particelli, as the one which he signed.

Mr. Brookes: May I ask the date on that?

Mr. Marcussen: July 7, 1943.

The Court: They will be admitted as Exhibits P and O.

(Whereupon the documents marked Respondent's Exhibits O and P for identification were received.)

Mr. Marcussen: Your Honor, I now ask Counsel to stipulate that the records of the Bank of Sonoma

(Testimony of Giulio Particelli.)

County show the following deposits to the account of the Petitioner:

June 22, 1943	\$4,255.90	
June 25, 1943	4,849.50	
June 29, 1943	5,283.40	
July 8, 1943	4,883.30	
July 12, 1943	5,279.25	
August 23, 1943	5,305.70	
August 27, 1943	4,259.90	[114]
August 27, 1943	4,325.90	
August 27, 1943	4,243.30	
August 27, 1943	4,258.70	
August 31, 1943	4,856.10	

May that be stipulated?

Mr. Brookes: It is stipulated that according to the bank records, those deposits were made in that amount on those days.

Q. (By Mr. Marcussen): What was the total capacity of your winery in December, 1943?

A. I can't tell you exactly the capacity. It would run 270,000, 275,000 gallons, 280,000 gallons; I don't remember exactly the gallons.

Q. Is that in storage tanks or fermenting tanks?

A. Storage tanks.

Q. Storage tanks?

A. Yes.

Q. Referring now to the 275,000 gallons that were sold to Tiara in that month, how much of that wine was in your winery?

A. Well, some wine in the Scatena Winery, Healdsburg, see, I crush a little bit more, the one

(Testimony of Giulio Particelli.)

I expect are already bought, and I don't have no more storage tank and I call up in Scatena to give me a favor to me storage of wine. [115]

Mr. Marcussen: Now, Mr. Reporter, will you read that answer back, please?

(The last answer was read by the reporter.)

Q. (By Mr. Marcussen): How much did you put down there at Scatena?

A. I forget if 18 or 20 or 24,000 gallons.

Mr. Marcussen: If Your Honor please, the stipulation shows that there was 19,000 gallons at the Scatena Winery and 256,000 gallons at the Petitioner's winery.

Q. (By Mr. Marcussen): You said you blended some wine?

A. Yes.

Q. In 1943?

A. '42, '43.

Q. '42 and '43?

A. Yes.

Q. And that was wine that you purchased?

A. Wine I buy out in some other winery.

Q. And that was either then from Italian Swiss Colony—

A. Or Petri Winery.

Q. Geyserville—

A. Geyserville Growers, Garretto Winery, Napa.

Q. By the way, did you purchase wine from any other sources except the sources you mentioned this morning and the addition of that Garretto Winery?

A. Italian Swiss Colony, at Healdsburg, Foppiano Winery, two miles before you get to Healdsburg in the left hand side.

Q. Yes, that's all right. We just want to get the names straight. All right, we have Italian Swiss

(Testimony of Giulio Particelli.)

Colony, Petri, Foppiano, Geyserville Growers, Garretto, and any others?

A. I don't remember any more.

Q. Now, for blending purposes, what kind did you buy? A. Dry wine.

Q. And was that finished wine?

A. Finished wine.

Q. It was finished wine? A. Yes.

Q. You took finished wine and put it in with your unfinished wine?

A. Yes, because it gives you a taste. Otherwise, you can't sell it.

Q. Do you know whether that is the usual process? A. What?

Q. Do you know whether that is usually done, to mix finished wine with unfinished wine for blending?

A. Finished wine has got a lot of work done before it would be finished wine.

Q. Doesn't the blending process usually take place later, don't you blend just before the final filtering?

A. At the filtering, they got the blending. You got to [117] have chemicals for blending wines. You have to have a man that studies chemistry—analyze—a man that knows the business. He has to be in school.

Q. Is your testimony that it is necessary to have a chemist analyze the wine and study it to determine how to blend it, is that it?

A. If you want a real finished wine, yes.

(Testimony of Giulio Particelli.)

Q. In 1943, when did you start crushing?

A. Oh, I can't tell you the day, around the 20th, 25th of September or the 1st of October, one or the other one was starting.

Q. And did you make—go around the country-side before that, and make contracts with growers for the purchase of their grapes? A. Yes.

Q. And you specified the price that would be paid for those?

A. Yes, I tell them we pay just as much as the other winery pay, pay just as much as the other winery pay.

Q. By that, do you mean that you agreed with them to increase the price to the highest price that would be realized?

A. If we want to wait to see the other winery how much they pay, if they pay 80—if they pay 80—we pay 70. A lot of them they don't do that, they want to know how much they will give me. [118]

Q. I think you stated this morning that you crushed during that season and paid a high price for grapes. By the way, what was the price you paid for grapes? I don't think you did testify to that.

A. Well, I paid just as much as Petri and the other wineries paid, 77, 50, 70, up to 95, white grapes.

Q. A ton? A. Ton.

Q. And I think you testified this morning that you did that because you expected that the O.P.A. price ceiling would be raised?

(Testimony of Giulio Particelli.)

A. Everybody expected the O.P.A. price is going to be raised.

Q. And I suppose everybody was waiting for the O.P.A. to come out with the price increases, is that correct? A. What?

Q. I suppose everybody then in the business and you in particular was waiting for those announcements to come out from the O.P.A., is that correct?

A. They never raised the price, never moved the price.

Q. But they came out with a statement in the fall of 1943, didn't they?

A. I don't remember. I know they don't move the price, and that is the way I sold my wine because I owe too much money at the bank. I have a mortgage and I scared they going to take [119] me over.

Q. Did you talk the subject over freely with other wineries and other people in the winery business of what the O.P.A. was going to do?

A. Well, everybody know just as much as I know.

Q. Did you know just about as much as everybody else knew?

A. I think Italian Swiss Colony know more than I do, they are bigger.

Q. They would know more, but I am talking now about the smaller wineries like your operation.

A. We never, I never go to meeting.

Q. Did you talk it over with your colleagues, did you ever talk the subject of the O.P.A. prices

(Testimony of Giulio Particelli.)

over with any other vineyardist up there?

A. I never talk nobody about the price. We wait for them to move the price high.

Q. How did you find out they were waiting for the price, did you talk it over with them?

A. No, if I sold my wine—after I sold my wine, I never talk to anybody no more.

Q. Well, did you know then that the O.P.A. came out with an announcement on October 1, 1943? A. No.

Q. You didn't know, did you, that the ceilings were set [120] in that announcement at 28c, a flat ceiling for red wine, and 33c for white wine?

A. I talk to the other wineries, 28c the ceiling price, before I sold my wine. I want to be sure; I come down and in my accountant's office, George Oefinger—

Q. I'm not talking about that now. Now, you stated, I think you said, you started crushing toward the end of September, the latter half of September. When did you finish?

A. I don't remember. We didn't finish the crushing until October. We still crush little, a few ton, in November, I think, I don't remember.

Q. Now, approximately how much was red, how much of your crush went into red wine and how much into white wine?

A. I don't make much white wine. I think the inventory of the white wine I have in the winery, around 19 or 20,000 gallons, 21, or something like

(Testimony of Giulio Particelli.)

that. It is no much white grape in that part of Forestville.

Q. Now, I would like to have you refer again to your conversation with Mr. John Dumbra, about the sale of your wine. You went down to Santa Rosa to talk to him?

A. Well, if I go down to Santa Rosa, he want to talk to me to buy some wine.

Q. Yes.

A. And I told him I just come home from Fresno. "You come up tomorrow morning, and down Forestville and we can talk [121] some business."

So what you know, "Why don't you come down tonight after you have your soup, I here already in Santa Rosa," and he say, "After you have your soup, we have a highball together and we talk about business."

Mr. Marcussen: Just hold it there. Mr. Reporter, will you read back the answer, please?

(The last answer was read by the reporter.)

Q. (By Mr. Marcussen): Will you go on from there? A. Yes.

Q. Then you went down to Santa Rosa?

A. I went down to the Santa Rosa Hotel and asked for Mr. Dumbra. I never know him before, and he show him. He is down in the lobby, and I just present myself and I tell him, I am Mr. Dumbra and I am Mr. Particelli, and we go in the bar and have a drink, a highball, and he say,

(Testimony of Giulio Particelli.)

“I want to buy some wine from you,” so all right, we go——

Q. What was that?

A. If we go together, maybe I am going to sell to you.

Q. What do you mean, “if we go together,” if we get together?

A. If buy all. I told, “If you buy all, say how much you want, no use asking me how much you want. You know pretty well we have a ceiling price on, if you take all I will let you [122] have it for the ceiling price, but you have to take the lees, you got to pay me each gallon my inventory. I mean the inventory I have on hand, and if I lost too much wine in shipping or cloudy or so, I want to be paid for all things.”

Q. In other words, you insisted that you be paid for the gallonage of your total, your total gallonage that it was in the winery and any loss in shipment and any loss from the time of the sale to the time of the shipment, that was at the expense of Tiara? A. Yes.

Q. And you then and there agreed to sell to him at the ceiling price? A. Yes.

Q. And then later on he asked you—strike that. Then, did you sign anything, any agreement with him right then and there for the sale of the wine?

A. No, because I come down the next day. I want to ask him advice of my accountant, George Oefinger.

Q. George Oefinger? A. Yes.

(Testimony of Giulio Particelli.)

Q. And you went to his office then?

A. Yes.

Q. And you had, when you went to his office you had agreed to sell your entire—

A. I want to find out how much the ceiling price to be sure. [123]

Q. Then you weren't going to ask any more, is that right?

A. Yes.

Q. So that you were quite willing then to sell him your entire stock of wine at the ceiling price?

A. Yes.

Q. Which you understood to be 28 cents, is that correct?

A. Yes.

Q. That is your testimony?

A. Yes, that's what I sold for, ceiling price, and I told him it to be 28 cents.

Q. Now, I think you testified a little while ago that you went into all of this crushing because you expected the O.P.A. to do something about the ceiling prices, to raise them?

A. Everybody expected they were going to be raised.

Q. Then who did you sell in December for 28 cents a gallon?

A. Because I be scared the bankers is going to take me over. I have to pay a lot of interest to the bank every month and I owe over \$75,000.

Q. If the bank took you over, you couldn't do any worse, could you, to get 28 cents?

A. They take everything because they have the mortgage, the whole thing.

(Testimony of Giulio Particelli.)

Q. You weren't willing to wait? [124]

A. Well, I can't sleep nights. I owe too much money to the bank, and I want to clear it up.

Q. What do you figure that wine cost you to produce?

A. Well, cost around 50 cents, 52.

Q. Yes, and by the way, you spoke about finishing. What does it cost to finish wine?

A. I never finish wine. I no have no idea how much it cost for finish wine.

Q. Did you ever have any wine finished for yourself?

A. I bought some from the other wineries.

Q. No, did you ever take any of your own wine that you crushed and have it finished by someone else?

A. I have around 20,000 gallons and we sent it to Geyserville Growers for finishing.

Q. When was that?

A. I think in 1943.

Q. Yes, and what did they charge you?

A. I think they charge me 5 or 6 cents a gallon for finish.

Q. 5 or 6?

A. And besides I have to pay for bringing it down there, and go and get it again. You know, in the tank car, and I think they charged me two cents and a half each gallon to Forestville to Geyserville.

Q. How far from Forestville to Geyserville. [125]

(Testimony of Giulio Particelli.)

A. I think 25 miles, around 25 miles, less or more.

Q. You were so worried about your bank loans that you were quite content to sell your wine at 28 cents?

A. And pay the bank off.

Q. That cost you 52 cents to produce?

A. I don't know exactly how much it produced. I don't know exactly, around 50 or 52 cents.

Q. That is what you estimated a moment ago. How much did you owe the bank at that time?

A. Exactly, amount is over \$75,000. I know, I don't know if it \$76, \$77, or \$75,000.

Q. And then later the next day, Mr. Dumbra came to you and said, "By the way, would you like to sell the winery too," is that what he said?

A. He told me on the same day, "if I wanted to sold the winery."

Q. And you asked him \$300,000?

A. \$300,000.

Q. Now, you are certain that you didn't make a deal for a total price of \$350,000 right in the beginning?

A. No, we make two deals. The wine one price and the winery the other.

Q. Yes, your recollection is absolutely certain about that.

A. What did you say? [126]

Q. Your recollection is quite certain about that, isn't that right?

A. I make one deal for the winery and one deal for the wine.

(Testimony of Giulio Particelli.)

Q. What did he say about the winery, Mr. Dumbra?

A. He don't say nothing, they intend to move to California, and they say, "I bought one already down south and I like to have one here in the north for dry wine."

Q. Do you know Mr. Gould here, sitting at the table with me? A. I don't recognize him.

Q. Do you remember him at all? A. No.

Q. Do you recall that an Internal Revenue Agent came out to investigate the amount of your tax liability?

A. When they come they go down to the office and my daughter——

Q. And did you talk with the Revenue Agent?

A. Some time he comes down in the winery and I say to him, what he want, and I had him to check in the winery.

Q. Well, then, the answer is yes, you did talk to a Revenue Agent about your tax liability, is that correct?

A. They come and see the inventory, and come and see the—see the stamp that we have on hand. I can't answer this one, I send him down to the daughter in the office. [127]

Q. Are they the Alcohol Tax Unit people?

A. What?

Q. Were they the Alcohol Tax Unit people or Income Tax people?

A. Nobody never come, nobody from the Income Tax in my office.

(Testimony of Giulio Particelli.)

Q. You never talked to anybody about your income tax liability, that is, no Internal Revenue Agent that you know of?

A. He never come to see me.

Q. And I point out Mr. Gould sitting here at the end of the table and ask you whether you ever had a conversation with him.

A. I—one man come, I don't know if he is him. He come down to Rincon Valley, you know, after I move in the Rincon Valley. I there work at the yard, and he ask me if I have my books down there.

Q. Then you did talk to someone?

A. For the winery, and I said no, the books, and I tell him I have it down in the barn, and the old man, he helped brought them up home. If they want it only thing to come down to Mr. Goerge Oefinger down to the bank, they have the escrow to the deal.

Q. At the time he came to see you then, did you make any statement to him that you could buy back that winery for \$50,000?

A. No, I never said. [128]

Q. In 1944? A. I never say nothing.

Mr. Brookes: Your Honor, I objected and I was overruled as to the scope of this cross examination and, in deference to that ruling, I have foreborne from repeating my objection, but I can't help but wonder how long this is going to go on, and if Counsel intends to cross examine Mr. Particelli much longer, I think I must ask that the case be adjourned for today until tomorrow. Mr. Parti-

(Testimony of Giulio Particelli.)

celli has been on the witness stand since 10:30 except for about an hour and a half recess, and, if he is human, he is tired, and when people get tired, if their memory doesn't begin to fail them, they differ from myself. Mr. Marcussen has asked him about everything except the name of his mother. It is quite a test of mental agility to follow the route over which he has taken him. May I ask the Court to instruct Mr. Marcussen to terminate the cross examination at some reasonable period or else the Court adjourn for the day?

The Court: Well, I wouldn't assume the responsibility of controlling the conduct of Counsel in trying the case. Of course, I think a lot of this examination is outside of the scope of the examination in chief. The only reason I overruled you was that it made no difference whether it was cross examination or direct examination, and if he examined him as such, he would be an adverse party and the answers he gave would not be [129] binding on the respondent. It seems to me that it's of little significance whether it is cross examination or examination in chief of his own witness. On the other question, I don't think—he looks like a pretty rugged specimen to me. I think he can hold up for the usual time for the court hours here. Of course, I am interested in having the cross examination—having the examination terminated but only in the interest of getting along with the case. I am not going to assume the responsibility of telling him when he should quit.

(Testimony of Giulio Particelli.)

Mr. Marcussen: Thank you, your Honor. I might say, I think I am drawing to a close rather shortly. There has been the added difficulty of understanding the witness.

The Court: Yes, I appreciate that.

Q. (By Mr. Marcussen): Referring to the sales at your store, Mr. Particelli, in bottles, could you describe those sales again? Were they to restaurants and people who were interested in buying a gallon or two of wine?

A. We don't sell bottles there, nothing. Sometimes he sells one gallon or two gallons. We don't sell nothing in the small town of Forestville, and finally if you find out, I take the whisky license and I just had it for one year and I give it up because it don't pay. It's too small town for liquor store.

Q. When did you operate the liquor store?

A. I think in 1942, '43. [130]

Q. For a total period of about a year covering both years? A. We just try one year.

Q. It's '42 or '43?

A. '42 or '43, I think the two years. The liquor license we don't sell nothing.

Q. Now, my question was with respect to wine, bottled wine. You sold bottled wine at that store, didn't you? A. In bottles, we sell, yes.

Q. Did you sell bulk wine at that store too?

A. No.

Q. What other merchandise did you sell at that store?

(Testimony of Giulio Particelli.)

A. We sell beer, wine, coca cola, soda water.

Q. Now, the sweet wine that you purchased from the other wineries—

A. We sold some bottles.

Q. And did you bottle most of that yourself?

A. Yes.

Q. Did you sell any of that sweet wine at wholesale? A. Wholesale?

Q. Yes. A. Yes, for the bar.

Q. Where? A. Bar, grocery store.

Q. That is locally, in town? [131]

A. In Vallejo, Napa, Sonoma, San Rafael, Fairfax, we have a truck go 'round and deliver.

Q. And what was the average sale, do you recall?

A. Average sale you mean?

Q. Yes. Average. You know, about how many gallons would you sell at a time?

A. Oh, some buys two gallons and some buys ten gallons, some buy five gallons, you know. We passed through every week and they buy what they use. Sometime one gallon, three gallon, sometime it's twenty gallon.

Q. And all of the sweet wine was sold in that manner, wasn't it?

A. Yes. Maybe a few bottles we sold in the retail store too.

Q. Yes, and I want to ask you again whether you can refresh recollection in any way about how much of the dry wine did you sell in the store, and how much did you—referring now to your purchases of dry wine—how much of that did you sell

(Testimony of Giulio Particelli.)

in this manner through the store?

A. You mean retail store?

Q. Yes.

A. Sometimes we don't sell one gallon a day.

Q. Now, but let's assume that you purchased—let's assume that you purchased a hundred gallons from Petri of dry wine. You testified that you purchased some for blending [132] purposes?

A. Yes, I bought this in bond. The one I bought for blending and I bought in bond.

Q. Was most of the dry wine that you purchased from other wineries used for blending purposes? A. No, we bottle.

Q. You bottled some of it? A. Yes.

Q. And you sold it in the same manner that you described a moment ago?

A. The sweet wine.

Q. At the store and also in the surrounding countryside? A. Grocery store.

Q. Bars? A. Yes.

Q. People like that? A. Yes.

Q. Do you have any idea how much, what proportion of the purchases of dry wine that you made from other wineries was sold in that manner and how much went into the blending with your wine?

A. No, I no use much for blending. I just—it just for blending mostly this wine I sold for this Sunset in Ohio, and the rest, I don't know, no going to buy old wine for blending when I can bottle down in the bottling place. [133]

Q. Why not? A. No pay.

(Testimony of Giulio Particelli.)

Q. Too expensive? A. Too expensive.

Q. So that there was only a small proportion of your purchases of dry wine for blending, is that correct?

A. Yes, and the rest, I buy in tax paid containers. You gave me a 50 gallon, 25 barrels, and we put them in bottle, gallon, half a gallon, quart.

Q. And sell it through the store in the manner that you have described?

A. Grocery store, bars.

Q. Now, you recall that you estimated that your sales to this Ohio concern were about 50,000 to 60,000 gallons?

A. I say I don't know for sure how many.

Q. Yes, I know, but that is your best estimate?

A. It might be more, yes.

Q. But that is—that is approximately correct?

A. It may be more, I forget how many carloads I sent.

Q. Now, what proportion of that 50 or 60,000 gallons or more that you sold constituted wine that you had purchased from other wineries and had blended in with your own wine?

A. I pour about 100 gallon each thousand gallon, just for give it a little flavor, old wine.

Q. Now, referring again to the sweet wine, do you have [134] any idea of what proportion of the wine you sold through your store was sweet wine that you had purchased elsewhere and what proportion was dry wine?

A. Well, at first, when we started, we sold more,

(Testimony of Giulio Particelli.)

pretty near more sweet wine than dry wine. After the 1942, the wine, dry wine would sell increase a little more than sweet wine, but I don't get the idea of how many gallons I sold every day or every week.

Q. Did the sales of dry wine after 1942 and into 1943, I think you said when they increased, did they ever exceed the sales of sweet wine?

A. What did you say?

Q. Were they more, eventually, did they become more than the sales of the sweet wine?

A. In 1942, and 1943, it increased and the sell in the dry wine, more sweet wine.

Q. More than sweet wine?

A. Yes, we sold more dry wine than sweet wine.

Q. Now, on the sweet wine, what would you pay for that sweet wine?

A. Well, it's the changing price, pretty near every month, Italian Swiss Colony 69 cents, and plus tax.

Q. What was the tax, what was the Federal tax?

A. I think it was 22 cents a gallon, on sweet wine.

Q. Plus tax. And I think you testified you sold that [135] wine for \$1.25 a gallon?

A. \$1.25, \$1.20.

Q. And the dry wine you would sell for about \$1.10 a gallon?

A. I said the high grade wine, I buy from

(Testimony of Giulio Particelli.)

Italian Swiss Colony, in—this is a high grade wine I have it.

Q. And then the Petri wine you sold for about 45 cents, is that what you said? A. 45, 48.

Q. And the Geyserville the same?

A. Yes, same.

Q. Now, what proportion did you buy from each one of those, do you recall?

A. Well, I can tell you how much I buy. Sometimes one week maybe I buy a thousand gallons, next week I don't buy nothing.

Q. Over a period of a year?

A. I don't get the idea.

Q. Over a period of a year, did you buy more of your sweet wine, we will say, from—or, rather, your dry wine, from Swiss Colony?

A. Mostly all the sweet wine is coming from the Italian Swiss Colony.

Q. But how about the dry wine?

A. Is also dry wine I buy, from Italian Swiss Colony for [136] high grade wine.

Q. And what proportion of your sales then, for your purchases of dry wine were the high grade wine, from Italian Swiss Colony and what proportion of your purchases constituted the lower grades from Petri and Geyserville?

A. Well, high grade wine, we don't sell much of the cheap wine we sell.

Q. What did the high grade wine from Petri cost you?

A. I never buy, I just buy one brand from

(Testimony of Giulio Particelli.)

Petri, the red wine. I don't buy any high grade wine, just the one kind.

Q. Did I say Petri? I beg your pardon. I meant Italian Swiss Colony.

A. I buy Burgundy, one price, Zinfandel, Sauterne in another price. I forget how much I paid for one of them and the other.

Q. They were in a fairly close range of each other?

A. They have everything in the records there, how much I paid, and how many gallons I bought.

Q. I am talking about Italian Swiss Colony now, where you bought your high grade dry wine.

A. All my high grade wine is coming from Italian Swiss Colony.

Q. How much did you pay for a gallon on an average? A. It's different kind. [137]

Q. Just take each kind then, please?

A. I don't remember exactly how much I pay. The Burgundy and Tipo we pay up to 65, 70 cents a gallon. That is a real finished wine to pour in the bottle.

Q. This is the high grade wine that you are buying from Italian Swiss Colony? A. Yes.

Q. And which were the cheaper brands that you bought from—which brand was the cheaper brand of those high grade, less expensive brands?

A. Italian Swiss Colony?

Q. Yes.

A. This also finish wine because we got the Claret is five cents more cheap, or ten cents more

(Testimony of Giulio Particelli.)

cheap than Zinfandel. Zinfandel is five cents cheaper than Burgundy. All finish wine and age wine.

Q. All right. What was the cost of the most expensive?

A. Well, around 65, 70 cents. The dry wine?

Q. The dry wine. Now, what did the wines that you purchased from Petri, what did they cost you?

A. I forget how much we paid. This is no old wine, just the new wine.

Q. Current wine, is that it? A. Yes.

Q. And that is the wine that you sold at 45 cents a [138] gallon?

A. 34, 35; I forget how much I paid for it.

Q. You were just mentioning the prices that you paid? A. Yes.

Q. 30 or 35 cents? A. 34, 32; I forget.

Q. Now, how about Geyserville?

A. Same price pretty near, they sold the same price, and also for Foppiano.

Q. The wine that you got from Foppiano, was that a high quality? A. No.

Q. That was the same quality as Geyserville?

A. Just common wine.

Mr. Marcussen: If your Honor please, that concludes the cross examination, and I would like to ask, however, that the taxpayer be bound over for possible further cross examination as the case goes along.

The Court: I imagine he will be here, it's his case.

Mr. Brookes: Your Honor, I have some redirect.

(Testimony of Giulio Particelli.)

I would estimate that I might finish it within 15 minutes or 20 minutes. Shall I continue?

The Court: I think it would be well for you to proceed now. [139]

Redirect Examination

Q. (By Mr. Brookes): Mr. Particelli, when you were speaking of the prices that you paid for wine in answer to Mr. Marcussen's questions, did those prices include tax? A. No.

Q. Did you pay the tax on top of those prices or was this bonded wine?

A. No, they made the bill so much for wine and so much for tax.

Q. Did I understand you to say that the carload lots of wine which you sold to the Sunset Winery in Ohio consisted of blended wine?

A. Yes.

Q. Did I understand you to say that that consisted partly of your own wine? A. Yes.

Q. And partly of wine—finished wine which you had purchased elsewhere? A. Yes.

Q. Can you describe the transaction in which you came to sell that wine to the Sunset Winery?

A. How much I sold?

Q. No, can you describe how you came to sell it? I am trying to find out whether the correspondence, whether he came [140] to see you.

A. They come to see me, down at Forestville, looking for wine.

Q. Did you agree upon a price per carload lot?

(Testimony of Giulio Particelli.)

A. Yes.

Q. At that time? A. Yes.

Q. Was the price measured in gallons or carload lots? A. Carload.

Q. Carload did you say? A. Carload.

Q. Did they specify what percentage of the wine should be your own wine and what percentage should be finished wine?

A. Like I say, I poured you every thousand gallons 100 gallons finished wine.

Q. I asked you if they specified that you——

A. No.

Q. Do you have that in percentage?

A. No, he tested, put it in their mouth and they like, and we specified the price, and I started shipping about a week after.

Q. Was the wine which they tested the blended wine which was shipped them? A. Yes.

Q. It had already been mixed? [141]

A. Already mixed.

Q. Marcussen asked you if the sales to the Sunset Winery were the only sales that you made of your own wine in 1943 in bulk. A. Yes.

Q. And you answered "yes." Did you remember that was the question that you were asked and that was the answer you gave?

A. In tank car lots.

Q. Do you describe sales in five gallon lots, ten gallon lots and 25 and 50 gallon lots as in bulk?

A. As in bulk?

Q. Are those in bulk? A. Yes.

(Testimony of Giulio Particelli.)

Q. Did you in 1943 makes sales of your own wine in 5, 10, 15, 20 gallon lots?

A. 5, 10, 15, 100 gallons, yes.

Q. This morning, in answer to a question of mine, as I recall it, you testified that when you sold your own wine made by you, in 1943, in bulk that you sold it for prices of 32 to 40 cents a gallon including the tax?

A. Yes.

Q. When you made that statement, were you referring to the wine which you sold in 5, 10, 25 and 50 gallon lots?

A. We sold in 50 gallon lots, say sold 32, 34 cents. [142] If he buy 25, we want 2 cents more. If he wanted 10, we still charge few cents more, gradually, the lesser he gets more work; washing container, and everything else.

Q. You testified during Mr. Marcussen's examination that you—that after you had entered into the sale of wine to Mr. John Dumbra you withdrew 1,000 gallons of wine?

A. Yes.

Q. Do you remember the—approximately or exactly—if you remember, the time when you withdrew that wine?

A. I during the—during December, I forget what day.

Q. Was this 1,000 gallons of wine, wine which you had made yourself?

A. No, this was high grade wine I bought from San Francisco, and we call it Burgundy.

Q. Was it old wine?

A. It was the best wine I had in the winery.

(Testimony of Giulio Particelli.)

I take it for myself to drink myself, and I still have some.

Q. Had you been selling wine of this sort before the sale to Mr. Dumbra? A. If I sold?

Q. Had you been selling this same type of wine before you sold to Dumbra?

A. This is the same wine we sold for \$1.10, \$1.20 in gallon.

Mr. Marcussen: Will you read the last answer back, [143] please.

(The last answer was read by the reporter.)

Q. (By Mr. Brookes): Mr. Particelli, you referred to the fact that some of the wine which was in the winery when you sold it to Mr. Dumbra consisted of lees? A. Yes, it all has lees.

Q. What would you estimate is the amount of lees which was in the winery at the time of sale?

A. At the—racked all the wine, I measure Mr. Dumbra of around 20 to 25,000 gallons less.

Q. Was that at the time of the sale to Dumbra?

A. No, at the time I sold to Dumbra I only had about 6 or 7,000 gallons of lees.

Q. And when was it when there was 20,000 gallons of lees?

A. After the Dumbra, they ship all the wine from the East, I measured; I can prove it because I don't ship all the wine. I measured around 20 to 25,000 gallons between loss and lees.

Q. That was after you shipped to Dumbra?

A. I ship?

Q. At that time about 20,000 gallons of lees, that

(Testimony of Giulio Particelli.)

is what you meant to say? A. Yes.

Mr. Marcussen: Do I understand, Counsel, that he [144] testified that at the time of the sale in December, he estimated there were 6 or 7,000 gallons of lees?

Mr. Brookes: Yes. There is nothing inconsistent there, Counsel. I can't testify, Your Honor, but I know what he means. In the process of racking and filtering the wine, lees are produced, lees is the dregs in the tanks, and, before shipping wine, it is filtered and it is racked, and lees form in the process there. He has testified that there were about 6,000 gallons of lees in tanks at the time of the sale to Dumbra. That was on December 6, when the agreement of sale was signed. He has testified that there was a very large amount. The record shows what it was, of unfinished raw wine there. When he stated that there was 20,000 gallons of lees after he had finished the shipments East, that would be referring to the fact that wine had been racked and filtered in the meantime and that there were more lees in consequence because that was the sediment which had been filtered and racked out of the wine prior to shipment. Do you wish me to put this in the record, do you understand the explanation?

Mr. Marcussen: You may make the statement, Counsel, statements aren't evidence.

Q. (By Mr. Brookes): Mr. Particelli, what was the date, approximately or exactly, if you can remember, when you found there were 20,000 gallons of lees? [145]

(Testimony of Giulio Particelli.)

A. Before I give the key for Mr. Dumbra.

Q. When did you give the key?

A. First of May.

Q. May of '44?

A. I still have some wine for shipment.

Q. And when was it that you estimated there were 6,000 gallons of lees?

A. When I sold the wine to Dumbra.

Q. And when was that, what date?

A. It was in December.

Q. Of what year? A. 1943.

Q. How did the additional 14,000 gallons of the lees get produced?

A. Well, you start one tank and fill the bulk tank in the railroad track and sometimes you have so much lees in a barrel, you can't put the lees in the wine because it going cloudy. It's going to spoil the wine and that is why we pump it all in one tank. We pump all in one tank, and there some will be sold for distillery material and some destroyed. They don't pay much for the distilled material, 4 or 5 cents a gallon. Sometimes, and you got to haul to Italian Swiss Colony or some other winery.

Mr. Brookes: Is that to your satisfaction?

Mr. Marcussen: I think it would be to your [146] satisfaction, Mr. Brookes, not mine.

Mr. Brookes: I am satisfied that this is a matter which can be established within judicial notice. This isn't something particular to his wine. This is a technical fact which is common to all wineries, and in any treatise or text, including the reference

(Testimony of Giulio Particelli.)

in the Encyclopedia Britannica which I made earlier, that is made in full.

Q. (By Mr. Brookes): In the course of finishing wine, Mr. Particelli, is there as a result of the production of the lees, a loss in the amount of wine? I mean, do you have less when you get through finishing it than when you started?

A. We lost every year, we lost first year, new wine, the first year, we estimate we lost about 5 per cent, and the second year, two year old wine, it goes for 2, we estimate we lost around 3 per cent, and when the wine is coming over three years old estimate about 1 per cent. That is the way we estimate on the wine.

Q. In your examination by Mr. Marcussen, you referred to the bottling plant down to the store, and you stated it was at the store where you bottled the wine, the bottling plant being there and from which you sold the wine which you sold in bottles, and you referred to demijohns. Did you sell the store and the bottling plant to Dumbra, to Mr. Dumbra? A. No. [147]

Q. At the time of the sale to Mr. Dumbra, was there any wine in the store?

A. Yes, some wine, I got from Italian Swiss Colony and some other wine I bought from the other winery, and also some beer.

Q. What did you say, that the wine which was at the store was some Italian Swiss Colony wine?

A. The wine we have in the store?

Q. I am trying to understand your testimony,

(Testimony of Giulio Particelli.)

Mr. Particelli. I asked you if there was wine at the store at the time of the sale to Dumbra? A. Yes.

Q. And you said, "Yes."

A. In the bottling place?

Q. Yes.

A. A few barrels of wine down there, I don't know how many barrels we have there.

Q. Was that wine which you had produced yourself?

A. No, it all wine that we bought from some other wineries.

Q. Mr. Particelli, during your examination by Mr. Marcussen, I understood you to tell him that the records relating to the production of the winery and your income tax records were kept together in boxes and that these were destroyed, but I also understood you to tell Mr. Marcussen that [148] they were commingled with old, useless papers. Did you—will you tell us what the fact is?

A. The fact I explained this morning, we move everything down to Rincon Valley in the barn. The other box among some other stuff and we had a lot of paper there and I told my old man to burn them up, all this old paper, and instead of burning up all the newspapers and things like that, he takes the two separate boxes which have all the records and he burn them up too.

Q. Were there any old, useless papers that you wanted burned in the boxes that contained the income tax records? A. No, all.

Q. I don't think you understood my question.

(Testimony of Giulio Particelli.)

Were there any old, useless papers which you wanted to have burned? A. Yes.

Q. In the same boxes?

A. Not in the same box.

Q. No, not in the same box, is that your answer?

A. This box was separate. They picked it up, this one too.

Q. Mr. Particelli, what is your age?

A. Fifty-nine.

Q. How many buildings owned by you or in your possession burned up in the course of your fifty-nine years? A. Three. [149]

Q. What dates did they burn? A. What?

Q. In what years did they burn?

A. Well, the first, my house, burned up in 1930.

Q. Then what?

A. After a little, chicken house, they burn him up in the daytime because man has a cigaret, a man work for me, his name is Johnny, he is still living, and when we see smoke, we jump down there, is in fire, the chicken house, 14 by I think 20, 14 feet wide, just a frame building, just one board on the outside; no finish inside.

Q. And what was the third one?

A. The third was a little store, we built along the highway. My daughter—used to go around working, picking apples, peeling apples, and I told her we build a little store on the highway. I have a shoe repair place there in Sebastopol, and I told her we build a little store on the highway, you can sell few bottles of beer, you can sell a few dozen eggs, you

(Testimony of Giulio Particelli.)

can sell box of apples, and maybe go to work for somebody else, and that is what I done.

Q. Did you discover what caused the fire to your dwelling in 1930?

A. We had been in town. I had a little shop in Forestville, the shoemaker there, and repair shop, and I got to go down there in the evening to work and my wife is coming too, and [150] my daughter, she stay in the neighborhood there about a half mile away from my house, and this in 1930, fifteen years old and when the old lady that goes in my little store there, is my wife passed away, come and say, "I want to come too."

I cut my hair in the barber shop, and I have a key for closing my little store, and I see machines coming, and my daughter started howling, "Daddy, Daddy, the house is on fire," and when we reach there we can't go across. We lose everything we have.

Q. Did you find out the cause of the fire, what was the construction of the house?

A. A wood house.

Q. And the chicken coop that burned was constructed of what?

A. It's just a chicken house.

Q. Of wood? A. Yes.

Q. And the store?

A. Just a grocery store. It's old.

Q. When you moved from the winery after the sale to Mr. Dumbra and the Tiara Products Com-

(Testimony of Giulio Particelli.)

pany, did you leave any of your records at the winery?

A. We left in store Mr. Dumbra to have the name; left it in the office in the scale house office where the name. Next year if they want to contact the growers. [151]

Q. What was the nature of this record that you are referring to?

A. Just to bill, what we bought the grapes from Mr. So-and-so, and Mr. So-and-so, and so on. I think we left this one for Mr.—record for Mr. Dumbra.

Q. What were the records then which you took with you when you moved from your home in Forestville to Santa Rosa?

A. All this 702, 701, all the books that we have to the Government. All the bills we pay.

Mr. Marcussen: 702 and 701 is the Alcohol Tax Unit records?

The Witness: Yes.

Mr. Marcussen: Showing the amount of grapes you crushed?

The Witness: Yes, everything.

Mr. Marcussen: And the amount of land you got out of it?

The Witness: Every month we have to fill up the form, 702.

Q. (By Mr. Brookes): Mr. Particelli, you testified that at the time you were buying grapes in 1943, you hoped that the OPA would raise its ceiling prices? A. Yes.

(Testimony of Giulio Particelli.)

Q. At the time that you sold the wine in December of 1943, [152] did you still hope that the OPA would raise its ceiling prices?

A. Yes, the OPA is coming out and raising the ceiling prices, of course which they never do.

Q. I asked you if at the time of the sale to Dumbra in 1943, you still retained the hope that the OPA would raise its ceiling prices?

A. Yes, everybody hoped, everybody would think, but I got to pay a lot of the interest on my loan and I thought we had better sell the wine and pay my debts to the bank and this way I have my little ranch clear and the winery clear.

Q. Did you consult anyone or ask the advice of anyone—

A. —my accountant, George Oefinger.

Q. —let me finish my question. Did you consult anyone or ask the advice of anyone before—about ceiling prices before the time you sold to Dumbra?

A. I consulted George Oefinger.

Q. Did you ask him what the ceiling price was or was your question something altogether different?

A. I asked him to find out how much the ceiling price to be sure.

Q. Did you ask him whether there was any possibility that the ceiling price would be raised?

A. Yes. [153]

Mr. Marcussen: I object to this, if Your Honor please, as being very leading and rather an important point in the testimony. It seems to me he should be requested to state the best he recollects

(Testimony of Giulio Particelli.)

as to the full extent of his conversation with Mr. Oefinger.

The Court: You might bring out what discussion or advice was asked and what scope it covered.

Mr. Marcussen: Yes, I think that is quite true to ask that in the form of what the scope was.

Mr. Brookes: I am perfectly willing to do so. I am simply doing this to save time. I recognize the question is leading.

Q. (By Mr. Brookes): What was the scope of your conversation with Mr. Oefinger?

A. I told him, Oefinger, say I coming down. I want to see exactly how much the ceiling price be because I think I going to sold my wine to Mr. Dumbra.

Mr. Brookes: That is all, Your Honor.

The Court: Do you have one or two questions you want to ask?

Mr. Marcussen: Yes, I have, Your Honor.

Recross Examination

Q. (By Mr. Marcussen): When did you sell lees for 4 or 5 cents a gallon? [154]

A. I think in 1942, maybe 1943. I sell some 5, 6 cents a gallon. I think I sold some to Italian Swiss Colony.

Q. Did you know that the lees contain materials, tartrates, as I understand it, that were important for war purposes?

A. I know the lees were sold for the distillery to making brandy.

Q. During the war, did you know that the Gov-

(Testimony of Giulio Particelli.)

ernment was buying a lot of tartrade material, lees?

A. I never know the Government buy; I know Italian Swiss Colony and Petri buy.

Q. Weren't you familiar with the fact that lees in 1943— A. What?

Q. Weren't you familiar with the fact that lees in 1943 were selling for anywhere from 20 cents a gallon up?

A. They pay, it goes by so much alcoholic content, they give me so much each alcoholic content.

Q. Where did you get that dry wine that you— finished dry wine that you used for blending purposes on that sale to the people in Ohio?

A. I think I get it from Italian Swiss Colony.

Q. The Italian Swiss Colony?

A. I think, I don't be sure, but I think I get some from Italian Swiss Colony. [155]

Q. You think you got some of it there?

A. From Italian Swiss Colony.

Q. Did you get any from Geyserville?

A. I don't know. I can't say where I did exactly. Know I bought some, I don't remember where I bought.

Q. You don't remember how much you bought from Italian Swiss Colony?

A. I don't know; I don't remember how much I bought.

Q. I am thinking now that you bought—didn't you buy about 6,000 gallons or so, was it in that neighborhood? A. Neighborhood?

Q. No, I mean was that about the amount?

(Testimony of Giulio Particelli.)

A. I don't know. I can't say how many thousand gallons I bought because I bought pretty nearly every week. I buy wine from Italian Swiss Colony.

Q. And you actually used a very high grade wine for the blending?

A. The high grade wine for the blending, you mean finished wine?

Q. Yes, finished.

A. Just a little bit to give it a good test.

Q. You just used a little bit to bring up the test of your own wine?

A. Yes.

Q. And you got some of that wine that you blended with [156] your own, some of that from Italian Swiss Colony?

A. Brandy wine.

Q. Yes, for blending.

A. I think I get some from Italian Swiss Colony, I don't know for sure.

Q. But you are not sure, you don't know where you got it, is that right?

A. I don't know if I have it from Petri, Geyserville Growers, that was eight years ago, seven years ago.

Q. Your testimony is then that you really don't know where you got it?

A. I don't know where I got it.

Q. Whether it was from Italian Swiss Colony or Geyserville or any of these others?

A. No.

Q. Do you have any recollection of what you paid for that wine?

(Testimony of Giulio Particelli.)

A. I don't remember how much I paid, because I bought in bond, no tax paid, I don't have an idea how much I paid for it.

Q. No idea at all what you paid for it?

A. No, it's about six, seven years ago, I don't remember.

Q. What was this figure of \$1.00 or \$1.25 that you testified to on your redirect testimony, when Mr. Brookes was [157] asking you some questions about that wine?

A. I testified \$1.25?

Q. Yes, didn't you testify that some of this finished wine that you had purchased was high grade?

A. You mean I sold for \$1.25, \$1.10 and \$1.25 high grade wine?

Q. Wine that you sold to——

A. The wine we put in the jug and sold for my high grade wine, I sold for \$1.10, \$1.20, and I bought it from Italian Swiss Colony, all my high grade wine, most of it, is coming from Italian Swiss Colony.

Q. And did I understand you correctly to say that the wine that you sold to the people in Ohio and sold at \$1.10, \$1.25.

A. Oh, no, I don't say that.

Q. Now, the wine that you sold to the people in Ohio, that was current wine, wasn't it?

A. My own wine, a part blended.

Q. Part blended to bring up to quality, is that correct?

A. Yes.

Q. But it was still ordinary wine, is that cor-

(Testimony of Giulio Particelli.)

rect? A. Just a filtered one, and racked.

Q. I meant the resulting product as you shipped it out was still ordinary current wine of ordinary quality?

A. My wine, best wine I have in the winery.

Q. A slight boost from a little higher quality wine, is that what you mean to say?

A. Don't finish the wine, it's not a high grade wine. It's impossible because he doesn't finish his wine.

Q. Then you did not mean to say that the price you got for that wine was \$1.00 or \$1.25?

A. I don't remember.

Mr. Brookes: May I consult with Mr. Marcussen for a minute?

Mr. Marcussen: Certainly.

Q. (By Mr. Marcussen): Mr. Brookes says, or has stated to me, his understanding that you testified that the 1,000 gallons that you took out of the winery was wine which you later sold for \$1.00 or \$1.25, is that correct? A. Yes.

Mr. Marcussen: Counsel, will you state for the record what you understand the testimony to be, in respect to that?

Mr. Brookes: Yes, sir, Your Honor and Mr. Marcussen. I asked the witness about the 1,000 gallons of wine which he withdrew from the winery after the sale to Tiara Products and my understanding is that he testified that it was that wine which was old wine which he had purchased from the Italian Swiss Colony and which was of the

(Testimony of Giulio Particelli.)

same type that he was [159] accustomed to selling for \$1.10 to \$1.25 a gallon and further testified that he withdrew that 1,000 gallons for his own use and he still had some of it on hand, and I am confident the reporter's transcript, if he is asked to read that back, will show that is what the question and answer was.

Q. (By Mr. Marcussen): Did you understand Mr. Brookes' statement about your previous testimony? A. Yes.

Q. Now, when you referred to the sales of this wine, or referred to this wine as being the wine which you were accustomed to sell at \$1.00 and \$1.25, are you referring to sales in your store?

A. For wholesale, delivery, 5 gallons here, 5 gallons there.

Q. In the bottle? A. In gallons.

Q. In gallons? A. Yes.

Q. Bottles? A. Yes.

Q. What did you pay for that in bulk?

A. How many I pay in bulk?

Q. Yes.

A. I can't put any price, I think I pay pretty close to [160] 70 cents a gallon for that Italian Swiss Colony wine.

Q. Now, when you purchase dry wine from Italian Swiss Colony and from other places for the bottling and resale as a bottled product, was that tax paid wine or——

A. Every sweet wine I buy, I buy tax paid.

The Court: He is talking about dry wine.

(Testimony of Giulio Particelli.)

The Witness: Dry wine, sweet wine, it go in the bottling plant, is all tax paid.

Q. (By Mr. Marcussen): Now, on the wine, referring again to this 1,000 gallons that we are talking about, that you say you purchased from some of the other wineries, I think your testimony was you don't recall what wineries you got that from?

A. What?

Q. I think your testimony was that you can't remember what winery you purchased that wine from?

A. I still think it is Italian Swiss Colony.

Q. That is, you said before that it was some from Italian Swiss Colony, is that correct?

A. Most all of my high grade wine is Italian Swiss Colony.

Mr. Brookes: I don't know if Mr. Marcussen is deliberately trying to mix the witness up or if he is deliberately mixed up as the questions indicate. He has asked the witness about two separate batches of finished wine, and the [161] witness is trying his best to keep his answers distinct, but Mr. Marcussen keeps mixing him up. One batch Mr. Marcussen asked about was used in the blending which went in tank cars to this winery in Ohio, and I heard the witness testify it was with respect to that finished wine that he was unsure whether it came from Italian Swiss Colony, Petri or where. With respect to the questions which I directed to him, and then subsequently Mr. Marcussen, about the 1,000 gallons which the witness testified he withdrew and of which he still has some, his testimony has not

(Testimony of Giulio Particelli.)

been ambiguous or equivocal. He testified that it came from Italian Swiss Colony according to his recollection, and if Mr. Marcussen would put the question to him in a manner that would be consistent with what has gone into the record within the past two minutes, I think it would help keep the witness from getting unnecessarily confused.

Mr. Marcussen: I want to assure you, Your Honor, I am not attempting to confuse the witness, so I suppose I will have to suffer whatever disadvantages may accrue from any possible confusion that seems to appear to be in evidence to Counsel. I have asked two sets of questions and maybe he was confused on that one point.

Q. (By Mr. Marcussen): I am now asking you, Mr. Particelli, about the 1,000 gallons that was in the winery which you drew out. [162]

A. What?

Q. I am asking you about the 1,000 gallons in the winery which you drew out.

A. Yes, I draw out and bring to my home.

Q. Yes. Now, was any of that wine, wine which you had purchased for the purpose of blending with the wine—with your own wine for purposes of sale to Sunset?

A. This, I say the high grade wine is altogether different, Burgundy.

Q. That was Burgundy wine?

A. Burgundy wine. I still have one barrel, 50 gallon barrel, maybe two, I don't know. I have a few barrels in the basement.

(Testimony of Giulio Particelli.)

Q. And was that wine tax paid?

A. Tax paid, tax paid, you mean tax paid now?

Q. Was it tax paid when you purchased it?

A. No, in bond.

Q. In bond?

A. Yes, this way I have in the winery, I can't keep in—wine in the winery if it no be in bond, and tax paid I keep that in the bottom place.

Mr. Marcussen: If Your Honor please, if you will excuse me just a moment, I would like to confer with someone.

That is all.

The Court: That is all, Mr. Particelli. [163]

Mr. Brookes: Before the witness is dismissed, perhaps if I could ask one question it might clear up the confusion which has been evidenced. If it can't be done in one question, I will give up. May I ask this one question?

The Court: Yes, you may. Let me express the hope it won't open up anything.

Mr. Brookes: It treats on the last question Mr. Marcussen asked.

Further Redirect Examination

Q. (By Mr. Brookes): Was all the wine which was in your winery bonded?

A. All bonded in the winery, all bond.

Q. Was all the wine which was in your bottling plant tax paid? A. All tax paid.

Mr. Brookes: That is all.

The Court: That is all. We will adjourn until

10:00 o'clock tomorrow morning.

(Witness excused.) [164]

* * * * *

Court Room 421 Appraisers Building,

San Francisco, Calif. Thursday, May 18, 1950

* * * * * [165]

PHILLIP BRANGER

called as a witness on behalf of the Respondent,
having been first duly sworn, testified as follows:

Direct Examination

The Clerk: State your name and address, please.

The Witness: Phillip Branger, 4293 Bennet Valley Road, Santa Rosa.

Q. (By Mr. Marcussen): Do you own the Lucca Winery at the present time, Mr. Branger.

A. Yes, sir.

Q. When did you buy it?

A. In '45, 1945.

Q. December of 1945?

A. Yes, it was in the early part, I believe it was in December.

Q. When you bought the winery, did you find certain records there? A. Yes.

Q. I hand you Respondent's Exhibit Q for identification, [167] consisting of a number of file folders, held together by a large rubber band, and ask you whether they are part of the records you found there? A. Yes, they are.

Q. What are they?

A. These are grape vouchers that were made pre-

(Testimony of Phillip Branger.)

vious to the time that I bought the winery, and I found that in the office when I bought the place.

Q. Are there also contracts in that file?

A. Yes, contracts.

Q. For grapes delivered?

A. I presume, total amount of grapes purchased by the previous owners, from certain parties which name is stated.

Q. The name of the seller of the grapes is stated on the name of each folder?

A. That's correct.

Q. And contained in each folder are weight slips for grapes delivered? A. Yes.

Q. To Mr. Particelli by those people.

A. I presume so, they were in the office when I came in.

Q. All right, they will speak for themselves, and also contracts? A. That's right.

Q. For the purchase of grapes? [168]

A. For the purchase of grapes. The same as are in effect at the present time.

Q. The same form of contract?

A. The same form of contract, yes, sir.

Q. Now, I hand you Respondent's Exhibit R for identification, which is a book approximately 18 inches long, and 12 inches wide, bearing the title, "Distilled Spirits Purchased," and underneath that form is B.E. 267-A. That book contained a lot of miscellaneous papers, and I will ask you to look through that, and ask you whether that book and the papers contained in it were also found by you

(Testimony of Phillip Branger.)

in the winery? A. Exactly.

Q. At the time you purchased it?

A. That's correct, sir.

Q. They were?

A. Yes. In fact, a letter or two that was addressed to me is also in that file. It was added after the papers were removed from the Lucca Winery.

Q. Oh, yes. This letter addressed to you obviously was not in the file when you took it over.

A. That is right.

Q. Will you check over through that file as rapidly as you can and see if that is the material that was in there when you took over?

A. These were the records that were in the winery when the property was turned over to me. These are the 702's. [169]

Q. 702's that were made out by Tiara Products Company?

A. That's right. Yes, I believe that is the entire amount of papers that were in when I took possession.

* * * * *

Q. (By Mr. Marcussen): Mr. Branger, what did you pay for the winery when you purchased it?

Mr. Brookes: I object, Your Honor, the witness has testified that the winery was purchased by him in December of 1945. That is two years after the transaction on which the issue in this case is based, and the distance of time between December of 1945, after the war was over, after the restrictions on the construction of wineries had been discontinued and

(Testimony of Phillip Branger.)

after the great demand for wine and wineries that was present during the war had terminated. The circumstances that I have outlined [170] lead, I submit, that the conclusion that the difference of time of two years is too great to make the purchase price of this winery in 1945, December of that year, of any probative evidence. Moreover, Your Honor, I can also properly object on the ground that the issue in this case must be not the value of the winery at any time, but the value of the wine, because we are not asking for a refund of any of the capital gains tax paid or the price received for the sale of the winery, and Counsel has, I think, by examination shown what is apparent, that the issue in this case is to the intent. He is trying to go behind the documents as to the value of the wine, but my principal objection is on the ground that the circumstances of the end of the war mean that two years' time can greatly change the value of any winery between December of 1943 and December of '45, so that whatever the value was, whatever the purchase price was in December of '45 is of no probative value in this case.

Mr. Marcussen: If Your Honor please, it is a part of the Government's case to show that there was no substance to the transaction, to the interpretation rather of this transaction which the Petitioner wishes to place upon it for tax purposes. As a part of the Government's case, I say the Government should be permitted to offer evidence as to the actual value, not only of the wine but of the winery,

(Testimony of Phillip Branger.)

to establish that there was an actual sham in the allegation which the [171] Petitioner has made on his behalf.

The Court: The value as of December, 1943?

Mr. Marcussen: Yes. Now, I realize that this purchase having been made two years later, may prima facie seem to be subject to attack but I would like to request that the evidence be received subject to a motion to strike if the foundation is not later laid for it. I propose to introduce in evidence, evidence covering conditions in the wine industry from 1943 to 1945 to show that there is no substantial difference which would reflect, to show rather, that the value of this winery in December, 1945, is a fairly accurate reflection of value in 1943.

Mr. Brookes: Your Honor, I submit that Counsel should lay his foundation first. The admission of any evidence into the record, even subject to a motion to strike, is bound to have some effect. It is written, it is printed, whatever it is is there, and a motion to strike something that is going to appear later, even in the recollection of a printed page, is virtually no protection against the consideration of even a psychological effect of irrelevant evidence.

Mr. Marcussen: I feel certain if it is not in this record, it can have no effect upon this Court, and the only reason I am calling Mr. Branger at this time out of order is his testimony is very brief.

* * * * * [172]

The Court: I will admit it. I think my present impression is that it's rather remote from the time.

(Testimony of Phillip Branger.)

I don't know just what effect it might have, and I don't want to decide that question at this time, but I do just inject that remark. I will admit it conditionally that the foundation will be laid for it.

* * * * *

The Witness: \$22,000. [173]

Q. (By Mr. Marcussen): \$22,000? A. Yes.

Q. Who did you purchase it from?

A. I have the name in my brief case.

Q. Whom did you talk to?

A. Pardon me, Lazzero from New York.

Q. It's your understanding that he was the owner? A. Yes.

Q. Did you talk to Mr. Lazzero at all?

A. No.

Q. Whom did you talk to?

A. The purchase was made there with Mr. Dumbra who had the mortgage on the property.

Q. What was his first name? Perhaps I could refresh your recollection, was it John or Victor?

A. I believe it was John Dumbra.

Q. And can you explain to the Court the circumstances, that is why it was Mr. Dumbra—what did Mr. Dumbra say to you in connection with the sale of the winery?

A. Should I relate all the details?

Q. Yes.

The Court: He wants to get some conversation that occurred at the time you negotiated.

A. I had sold some wine to the Dumbra interests, that is, to the Dumbra Winery. [174]

(Testimony of Phillip Branger.)

Q. Are you referring to Tiara Products Company?

A. Tiara Products Company, but it wasn't sold under the name of Tiara Products. It was sold to San Benito Winery in the southern part of the state. I should say, in Santa Clara County.

Q. Yes.

A. They were to bottle the merchandise and in turn buy it after it had been bottled.

Q. Don't go into all those details about that transaction, Mr. Branger. You did sell Tiara Products Company some wine? A. That's right.

Q. And did they owe you some money on it?

A. Correct.

Q. How much did they owe you at the time that you had negotiations with Mr. Dumbra for the purchase of the winery?

A. They owed me about \$17,000 at the time, and in return they offered to give me the mortgage on the Lucca Winery, and I looked the property over, and I felt that it was—well, safe to—it was safer to get their mortgage than to wait longer for my money. So I took the mortgage and paid the Dumbra Interests a balance of 5 or 6 thousand dollars, I don't recall the exact amount, to make the purchase price of \$22,000.

Q. Of \$22,000? A. That's right. [175]

Q. And what was the—did you receive a credit of \$1,000 on the \$22,000 purchase?

A. Yes, it was agreed that if I didn't buy it and would sell it probably to someone else, they would

(Testimony of Phillip Branger.)

use that cash to pay what they owed and it would give me a commission of \$1,000. Since that agreement had been made, I felt even if I bought the property for my own use, that I was entitled to that commission which they agreed to.

Q. So they gave you a credit for that?

A. They gave a credit of \$1,000.

Q. But the actual purchase price agreed upon and on the basis of which the transaction was handled was \$22,000? A. That's right.

Q. Now, would you describe the property as it was when you purchased it?

A. Oh, it's the average winery with a storage capacity of about 200 or 300,000 gallons, and fermenting room of about 65,000 gallons. The two buildings are adjoining one another. They are on a piece of land about an acre and a third next to the railroad track, with a well and a scale that you find in the average winery of that size. It's near Forestville, in fact, it's on main street of Forestville. The property didn't seem to have been in use for a short time, and it needed care. The roof was in bad shape, incidentally. I spent a few thousand dollars repairing it, adding some cooling systems and another [176] crusher. I had plans to make that property pay for itself, that is, pay for the taxes and insurance, but once conditions got to a point where it was not profitable.

Q. The main building, will you describe the construction of the main building?

A. You speak of the storage building?

(Testimony of Phillip Branger.)

Q. Yes.

A. It's a Basalt Block building with a tin roof, concrete floors, about 80 by 100 feet. I am speaking from memory now, I don't recall if my figures are accurate, but I believe it's 80 by 100, that is, the storage building.

Q. Yes. What about the other building?

A. And the building is a frame building, concrete floors, with an asphalt roof, that is about all, and the size, about the same, about 80 by 100.

Mr. Marcussen: That is all.

Cross Examination

Q. (By Mr. Brookes): Mr. Branger, how long had the winery been as you described it, in disuse, before you purchased it?

A. It was still on the bond but not in actual use, that is, there was no wine stored at the time I took possession, if that is what you mean.

Q. Yes, how long had the tanks been dry?

A. That I really don't know exactly. [177]

Q. What was the condition of the cooperage when you acquired the winery?

A. In fairly good shape.

Q. Had there been any deterioration of the cooperage from the barrels being dry?

A. Very little to speak of.

Q. Had there been any?

A. Well, I can't say, because I didn't make any wine in that winery until 1947, and at that time we didn't have to repair any of it except ordinary

(Testimony of Phillip Branger.)

work that you do in a fermenting room such as wetting the cooperage and letting it swell up to its standard size, cleaning, of course, and so on.

Q. You testified, Mr. Branger, that you, as I heard it, that Tiara Products owed you \$17,000 and they offered you the mortgage of that amount which they held on the winery, and that you said it was safer, as I think you expressed it, to take the mortgage on the winery than to wait for your money? A. That's right.

Q. How long had Tiara owed you the money?

A. For several months.

Q. Were they behind in their payments?

A. That's right.

Q. Did you expect that you weren't going to get paid until you took this?

A. I was afraid so, yes, sir. [178]

Mr. Brookes: Thank you, that is all.

Redirect Examination

Q. (By Mr. Marcussen): You had to pay an addition amount of cash to get the winery?

A. Yes.

Q. To make up the difference?

A. Yes, sir.

Q. Between the mortgage and taking all facts into account what they owed you, what was the amount of the mortgage?

A. The mortgage itself on the property I was told was \$20,000, that was the mortgage held by

(Testimony of Phillip Branger.)

Dumbra on the property, but I have no paper or proof to that effect.

Q. Well, didn't they convey the mortgage to you?

A. No, I had a straight deed, you know, clear title to the property.

Q. Was there a foreclosure on the mortgage, do you know? A. I don't believe so.

Q. But at any time you received clear title to it? A. I received clear title.

Q. Of the property, free of a mortgage?

A. Yes, sir.

The Court: Who held the mortgage, who owed the mortgage?

The Witness: Dumbra. [179]

The Court: I believe it was John Dumbra. You didn't assume the mortgage, you just took it free of the mortgage?

The Witness: Yes, I took it free of the mortgage, yes, your Honor.

The Court: In other words, you got \$17,000 value in the property as you considered it?

The Witness: That's right.

The Court: As represented by the mortgage?

The Witness: As represented by the mortgage.

Q. (By Mr. Marcussen): Plus the additional amount of cash that you had to pay and credits that you had to cancel?

A. I had to pay a little over \$5,000 to make up the balance for the purchase price; we had agreed to have the property turned over to me for \$22,000,

(Testimony of Phillip Branger.)

and since they owed me only about \$17,000, I had to give the amount to the title company in order to get clear title.

Mr. Marcussen: Thank you very much, Mr. Branger. That is all.

The Court: That is all, Mr. Branger.

(Witness excused.)

Mr. Brookes: Your Honor, I wish to call Mrs. Arthur Guerrazzi.

Whereupon

MRS. ARTHUR GUERRAZZI

was called as a witness on behalf of the Petitioner and having [180] been first duly sworn, testified as follows:

Direct Examination

The Clerk: State your name and address, please.

The Witness: Clotilde Guerrazzi, 1350 Francisco Street, San Francisco, California.

Q. (By Mr. Brookes): Mrs. Guerrazzi, will you state what your maiden name was?

A. Clotilde Particelli.

Q. Are you any relation to Giulio Particelli?

A. Yes, I am his daughter.

Q. Were you employed by Mr. Particelli at any time?

A. Yes, I was. I worked for my father.

Q. In what years?

A. Well, I worked for him way back from the first year we made wine right after the prohibition,

(Testimony of Mrs. Arthur Guerrazzi.)

right after the law was repealed.

Q. Through what years?

A. Through—the winery was sold.

Q. Then you were working for him at the winery in 1943? A. I was.

Q. And throughout 1943? A. I was.

Q. What were your duties?

A. At the winery in '43 or before? [181]

Q. Please tell us what your duties were for 1943 and the several years preceding that.

A. In 1943—well, during crushing season I took care of the weighing the trucks and so forth and so on and the book work connected with the winery. Also I took care of the other, we had a small business in connection with the wholesale of the wine. And the bottling plant and so forth.

Q. What were your duties in connection with the store and the bottling of the wine?

A. I managed the store and the bottling plant, did most of the work connected with it inside there.

Q. Do you mean that you did the bottling?

A. I did.

Q. Did you state that you kept the books?

A. I did.

Q. Does that mean that you kept the books only at the store, or did you keep the winery books too?

A. All the books.

Q. Does that mean that you did the billing?

A. I did.

Q. And did anyone else make any entries in the books besides yourself? A. No.

(Testimony of Mrs. Arthur Guerrazzi.)

Q. Do you remember the prices which were charged for the various types of wine sold by the business in 1943? [182]

A. Well, I do remember our wine, what I mean by our wine, we had our wine as the leading wine and that was the cheapest grade of wine we had.

Q. What were the prices of your wine?

A. Our wine we sold it all the way from 32 to 38, maybe a few gallons at 40 cents, according to the quantity they bought.

Q. Were these prices per gallon?

A. Right.

Q. Do they include the tax? A. They do.

Mr. Marcussen: Is that at the store?

The Witness: This is wholesale.

Q. (By Mr. Brookes): This is wholesale?

A. Yes.

Q. And in what quantities?

A. 5 gallons, demijohns, 10 gallon barrels, 25 gallon barrels, and 50 gallons.

Q. You said there was a range of prices according to the quantity. Could you identify the price when it was sold—the wine was sold in 5 gallon demijohns?

A. Yes, I would say that would be the highest price, say 38 or 40 cents, and then say they bought maybe a 50 gallon barrel, I would say the price was 33, maybe 35. [183]

Q. And also including the tax?

A. Correct, that was all tax paid wine.

Q. Do you remember the quantities of wine of

(Testimony of Mrs. Arthur Guerrazzi.)

your father's old vintage which were sold in this way?

A. No, right offhand I can't remember the quantity that was sold that way. I would say most of it was sold all—with the exception of those few carloads that we sent back East.

Q. Did you mean most of it was sold in this way except for the carloads? A. Yes.

Q. Would you have any approximate recollection of how many thousands of gallons?

A. No, that I can't. The only thing I can say is that like that '43 crush, whatever the wine, less the one that was sold to John Dumbra, less the carloads, that was what actually we sold that way.

Q. How was the 1942 crush sold?

A. '42 crush was sold that way too. That was sold in barrels, demijohns and so forth.

Q. Would you describe such sales as frequent or infrequent?

A. No, frequent, because that is the only way we had of disposing of our wine in '42—'41. In '42 we sent those carloads—'43 we sent those carloads back East. '42 we sent it [184] that way, sold it that way, in those 5, 10, and 25 and 50 gallons.

Q. And prior to the sale of these carload lots that you mentioned, prior to that time, during 1943— A. Yes.

Q. —were there sales of your own wine in these 5, 10 and 15 and so on?

A. Yes, there were.

(Testimony of Mrs. Arthur Guerrazzi.)

Q. Would you describe them as numerous or infrequent?

A. Well, no. I would say they were numerous because we had some wine, we made quite a bit of wine in 1942, I think.

Q. Do you recall approximately or exactly, if you recall, the date of the sales of the carload lots to which you refer?

A. No, I don't exactly remember the dates. I wouldn't want to be quoted on that. I imagine it was some time after—oh, I don't know. It wasn't new wine that we sent back there, that I am sure of. It must have been the middle part of the year before crushing season.

Mr. Marcussen: What year?

The Witness: That was '43, if I am not mistaken it was '43.

Q. (By Mr. Brookes): That is your recollection?

A. That is my recollection. [185]

Q. Do you recall the name of the purchaser of the tank lots?

A. I don't remember his name but I think his brand name or company name was Sunset or Sun-sweet, something like that.

Q. And located where?

A. Well, I can't remember that, back East somewhere, Ohio, Cleveland, Ohio, or somewhere back East. No, I couldn't tell you exactly. I made the shipping tags and all, but I don't remember.

Q. It was out of the state?

A. It was out of the state.

(Testimony of Mrs. Arthur Guerrazzi.)

Q. Mrs. Guerrazzi, do you know anything of the circumstances of the sale of the wine and winery to Tiara Products? A. Yes.

Q. Tell us in your own words what you know of the circumstances of the sale.

A. Well, what do you mean by that?

Q. Describe, please, the events as you know them.

A. Do you mean our introduction?

Q. The negotiations of the sale.

A. Our introduction to Mr. Dumbra and so forth?

Q. Including your introduction to the purchaser, Mr. Dumbra, and any events as you know of them of the negotiations between Mr. Dumbra and your father.

A. Well, the way I recall the situation was my father [186] went in the town at the time. My husband and I were—Mr. Dumbra came out and he asked me, he said that he would like to buy some wine. Well, I says I didn't have no authority whatsoever to quote him anything. He wanted to know how much wine we had on hand. I said I couldn't do that because I had no authority to do it but that my father was up in the southern part of the state and when he returned, I would tell him about him, so he took our 'phone number and he asked me if I knew more or less when he would return. No, I don't remember if he called up too in the meantime and I told him I was expecting him a certain night, that he was expected back,

(Testimony of Mrs. Arthur Guerrazzi.)

so this night, I guess it was the night after or the same night, I don't recall that, anyway, we were having dinner and my father had just returned from the southern part of California. I believe it was Fresno at the time and I had no sooner got to tell him a few facts of my conversation with John Dumbra than Mr. Dumbra did 'phone him and ask him if he would like to sell the wine, and Dad said, "Well, I can sell the wine, sure I can, why not?"

Mr. Marcussen: Were you present at this conversation?

The Witness: I was in the home when he was talking to Mr. Dumbra on the 'phone. I was in the house.

Mr. Marcussen: You heard your father say this?

The Witness: I knew he had the conversation with him on the 'phone because I was right——

The Court: Did you hear it? [187]

The Witness: Yes, I did. The kitchen was right off the hall and in the hall was the 'phone, so I would have heard it if I was in the house. So he asked my Dad to go down there to see him that night at the hotel, so they had a little discussion over that.

Mr. Marcussen: You didn't hear that, now, Mrs. Guerrazzi?

The Witness: Yes, I did, because I was in the house.

(Testimony of Mrs. Arthur Guerrazzi.)

Mr. Marcussen: You didn't hear him ask it on—over the telephone?

The Witness: No, I couldn't. All I could hear was the response.

Mr. Brookes: Your Honor, the witness is talking about something which, if it didn't come out this way, I would bring out by direct questioning. It will have the appearance of being hearsay, but it is not, and I want to present to you what I propose to establish by the questions, if they have to be asked, and the purpose behind it and the reason for its admission. Mr. Marcussen stated that he was attempting to impeach the testimony of Mr. Particelli yesterday. I am attempting to show that Mr. Particelli is telling the same story now that that he told to his daughter in 1943. If I succeed in doing that, I will be showing within well established boundaries of what is appropriate and permissible, that the witness has been [188] consistent both today, or yesterday, and in December of 1943, and it would be of obvious value to my case, and, furthermore, it is admissible under the established principles, I think your Honor will agree.

The Court: I think that the response by Mr. Particelli would indicate probably what he was responding to. The hearing—the thing is apparently whether she heard what Mr. Dumbra said over the 'phone. It is very probably that she didn't hear that, in fact, I think she claimed she didn't hear what was said, but the answers would indicate

(Testimony of Mrs. Arthur Guerrazzi.)

the nature of the conversation at the other end of the line.

Mr. Brookes: That is so, your Honor, but when it comes to the conversation which I think she was just leading up to or just mentioned, at the hotel, I think she will probably testify that she was not present at the hotel conversation.

The Court: We haven't reached that point yet.

Mr. Brookes: Well, if we haven't, we soon will. I will then wait until we do, and then make my point.

Q. (By Mr. Brookes): Proceed, please. You were relating the hotel conversation as you heard it at your father's end of the line?

A. They had planned the meeting with one another at the Santa Rosa Hotel. My father went to meet John Dumbra at the hotel. The next morning my father told us that he wanted to buy the wine and he told him he was going to buy it all and so [189] he was going to come up to the winery to taste the wine. Dad felt that he almost had to sell the wine. He had quite a bit of mortgage at the bank, at the time he also wasn't feeling well. I remember that part of it, so the next thing I know, that morning they both went to the winery, John Dumbra and my father, and he tasted the wine, and he says it was very satisfactory to buy the wine. He asked Dad what the price was, and Dad says, "Well, he would have to come down to the city to see. He was selling it for the ceiling price."

(Testimony of Mrs. Arthur Guerrazzi.)

The reason he was selling it was to pay the bank. He was quite worried about all those thousands of dollars he owed the bank.

Mr. Marcussen: Did he call Mr. Dumbra on the telephone?

The Witness: That wasn't on the 'phone. This was the next morning at the winery when John Dumbra came up to see the analysis of the wine.

Q. (By Mr. Brookes): Were you there at that time? A. No, I was not.

Mr. Marcussen: Your Honor, the Respondent objects to that.

The Court: Yes, I think the objection has to be sustained to that. You are supposed to testify to what you heard.

Mr. Brookes: Your Honor, may I make this point again? [190] This is a very serious matter in the case of the Petitioner, and I am quite certain I am correct. I shall ask for an exception, of course. Please don't think I am trying to run the Court.

The Court: I understand she is purporting to relate the conversation between Mr. Particelli and Dumbra at the winery the next morning.

Mr. Brookes: May I stop the witness and ask a question which would be a better foundation for the point I am about to make?

The Court: All right.

Mr. Marcussen: I would like to, before you do that, I would like to include in my objection a

(Testimony of Mrs. Arthur Guerrazzi.)

motion to strike the testimony so far as it pertains to the conversation.

The Court: It may be stricken at this point as to what occurred in the conversation, at the winery that morning, between Mr. Particelli and Mr. Dumbra. I understand you didn't hear that?

The Witness: No, I wasn't there.

The Court: That may be stricken.

Mr. Brookes: May I proceed?

The Court: You may proceed.

Q. (By Mr. Brookes): To lay the foundation, Mrs. Particelli, when your father returned from his meeting with John Dumbra at the hotel [191] in Santa Rosa, did he tell you anything about what happened at that meeting?

A. Mr. Brookes, you called me Mrs. Particelli.

Q. Excuse me, I am sorry. I may do that again, and, if so, I would—I will apologize.

A. I just thought——

Q. When your father returned from his meeting with Mr. John Dumbra at the hotel in Santa Rosa, did he tell you anything about what happened?

A. Yes, the next morning.

Mr. Marcussen: I object to that, if your Honor please; it constitutes hearsay.

The Court: Overruled.

Q. (By Mr. Brookes): When did he tell you?

A. The next morning.

Q. Do you mean the morning after his conversation?

A. After his conversation with Mr. Dumbra.

(Testimony of Mrs. Arthur Guerrazzi.)

Q. Do you remember now what he told you then?

A. Yes.

Q. Will you relate what he told you at that time?

A. He told me that he had intentions of selling the wine, as I said before, he was quite worried about the large sum of money that he owed the Bank of Sonoma County, and when he crushed—we all thought in the wine industry that the OPA would [192] raise that price according to the price we paid for the grapes, but this was already December and it didn't look like there would be any relief for that, so he decided in his own mind that he would be better off selling the wine and paying the bank off.

Q. Did he tell you this at this time?

A. Yes, he did.

Q. Did he tell you whether or not he had agreed to sell anything?

A. Well, he said that he had almost agreed to sell the winery, the only thing was that he had to be accurate on what the ceiling price was of the wine.

Q. You stated, Mrs. Guerrazzi, that he had used the—you used the word winery twice. You first said that he had almost agreed to sell the winery, and then he——

A. Never mentioned the winery that morning before he saw Mr. Dumbra. He just mentioned wine to me. That is what Mr. Dumbra really came out to see Mr. Particelli for, was for the wine.

(Testimony of Mrs. Arthur Guerrazzi.)

Q. And did you mean to state that your father stated to you then that he had—that it was the wine that he had agreed to sell at the wine ceiling price?

A. They didn't discuss the winery at all, I don't believe. It was just the wine.

The Court: You just misused the word? [193]

The Witness: That is all I did, Judge. I meant wine.

Q. (By Mr. Brookes): Do you remember when your father and Mr. Dumbra met a second time?

A. You mean after the meeting that evening?

Q. After the Santa Rosa Hotel meeting.

A. Yes.

Q. Where?

A. At the winery the next morning after the conversation of the night before.

Q. Were you present?

A. No, I was not.

Q. Did your father tell you immediately or shortly after that second meeting with Mr. Dumbra what had transpired at that meeting?

A. Yes, naturally. It was only natural that he would tell me those things, being that I worked for him.

The Court: Did he tell you?

The Witness: Yes.

Q. (By Mr. Brookes): What did he tell you?

A. He told me he had agreed to sell him the wine for the ceiling price and that he was coming

(Testimony of Mrs. Arthur Guerrazzi.)

down to see what the actual ceiling price was on the wine. [194]

Q. Did he mention anything about the conversation relating to the winery?

A. Yes, he casually said that Mr. Dumbra asked if he would also like to sell the winery and Mr. Particelli says, "Well, I don't know if you want to pay the price for it." That is as far as that conversation went, I believe.

Q. Did your father say whether he had quoted a price?

A. I don't believe—I don't know if he did or not. He may have said, but like I say—that he says "you want to pay the price" so if he did—he may have quoted him, you know, a big sum for the winery. Now, that I can't recall, but I know that is as far as the conversation went.

Mr. Brookes: Thank you.

The Court: You mean that is what he told you?

The Witness: That's right, your Honor. That he had asked if he would like to sell the winery.

The Court: You may cross examine.

Cross Examination

Q. (By Mr. Marcussen): You weren't present at any conference between your father and Mr. Dumbra? A. I was not.

Q. Were you here in the courtroom yesterday morning? A. I was.

Q. And did you hear your father testify concerning his [195] conversation with Mr. Dumbra?

(Testimony of Mrs. Arthur Guerrazzi.)

A. I did.

Q. About this entire matter of the Tiara matter?

A. Well, I was in the courtroom yesterday morning and I heard everything that went on.

Q. But you heard everything that he testified to yesterday morning, concerning the sale and the negotiations for the sale with Mr. Dumbra?

A. I must have; I was in the courtroom.

Q. Well, there isn't any doubt about it in your mind, is there?

A. No, I was listening to all the proceedings.

Q. Yes. Do you know Arthur Andersen & Company and what they do? A. Yes, I do.

Q. What is their business?

A. They are accountants.

Q. When did they first do any work for your father?

A. They did work for my father in the year '43 before the sale of the winery.

Q. Before the sale of the winery?

A. Yes.

Q. Did they do any work in prior years for your father?

A. I believe not. They were recommended to my father from the Bank of Sonoma County. [196]

Q. When would you place the date of the first contact your father made with them?

A. I don't remember. I wouldn't want to quote a date because I don't remember it.

Q. Well, can you approximate it at all?

A. No, I can't.

(Testimony of Mrs. Arthur Guerrazzi.)

Q. You said a moment ago you knew it was before this——

A. It was before, because we had contacted them in order to fill our income tax reports for the year '43. That was before we had intentions of selling the wine and winery.

Q. I see.

A. I don't remember the month.

Q. Were your income tax returns filed on the calendar year basis, that is, for the calendar year?

A. I believe so, I don't know if I understand that question.

Q. What income tax return was it, the return for the——

A. For 1943.

Q. For 1943, and you say that your father consulted Arthur Andersen & Company with respect to his tax liability for that year and that that consultation took place prior to December of 1943?

A. Oh, yes, we knew of Arthur Andersen & Company prior to the sale of the winery.

Q. Do you know what the nature of the inquiry was [197] concerning the 1943 income tax at that time?

A. You mean prior to the winery?

Q. Yes.

A. It wasn't an inquiry. It was just for them to come up and do the work for us, to take all the figures down and fill our income tax form. It wasn't an inquiry, it was for them to do the work for us.

Q. Did you keep the statistics and books from which the income tax returns were prepared?

A. Yes, I kept all the bills of merchandise

(Testimony of Mrs. Arthur Guerrazzi.)

bought, and I had all the checks from the labor paid out and so forth.

Q. Had you done that entire year's?

A. Yes, I had.

Q. Well, let's take—did you do it for the years 1941 and 1943, for example? A. Yes.

Q. For the 1942 return, did you submit that information to Arthur Andersen & Company?

A. Mr. Andersen didn't do our reports in '42.

Q. Who did them?

A. Now, I don't recall if I did them all completely. There was another man in Santa Rosa by the name of Walter F. Price. He is now passed away. He was an elderly man and he at one time helped us with those reports.

Q. You said that you kept the books for the store and [198] the winery? A. I did.

Q. Now, did you—what form did you keep them in?

A. Well, I really kept all the bills, all the cancelled checks, and all the deposits made.

Q. Did you keep any accounts in a book, a book of accounts?

A. Yes, I probably had a list of the wages paid.

Q. What other accounts were kept?

A. I had all the sales tax from all the merchandise sold.

Q. The merchandise sold? A. Yes.

Q. What other accounts did you—do you recall?

A. We had the bills to show what merchandise we purchased. We had the bank deposits to show

(Testimony of Mrs. Arthur Guerrazzi.)

how much money we deposited. All the money was deposited through the bank.

Q. Did you have anything in there about the insurance account?

A. You mean payment of insurance policies?

Q. Yes.

A. Well, no doubt that was on there too. That was bills paid.

Q. In that book did you attempt to keep all the expenses of the year as they occurred?

A. Well, I believe so, if I didn't have actually everything [199] on the books, I had all the bills.

Q. Well, now, let's take the gas bill. Did you have the gas bill in there?

A. I believe all the gas bills were there, yes.

Q. Then you not only saved the gas bills, but did you total them up and enter them into a book?

A. Now, I wouldn't be sure in telling you if I totaled them up and entered them in the book. What I am positive of is that I kept all of these separate, like the P. G. & E., I would have in some file, some other company in another file, some other in another file. If I actually had those on a book, I can't say, but I had the bills, and that is how that income tax was tabulated, through the bills.

Q. Tell me more about this book of accounts that you kept.

A. Well, I don't—the book of accounts, I know I had some figures entered on books of accounts like wages, that was almost the only way I could keep track of that unless I went back and got all

(Testimony of Mrs. Arthur Guerrazzi.)

the cancelled checks, like the wine we purchased, I had the bills. I didn't have no book of accounts, I had the bills for those.

Q. The wine you purchased?

A. Yes, actual bills I had, and P. G. & E.

Q. And did you enter that in the books?

A. I had bills of those, yes. [200]

Q. But did you also enter them in the books?

A. I believe no. I think I tabulated all those from the actual bills at the end of the year.

Q. At the end of the year you added them up and when you added them up, did you enter certain of them in the book of accounts?

A. That I can't tell you.

Q. What did you try to do with respect to that book, will you describe what the significance of that book was? You put some things in, you say?

A. Wages, I believe I put the wages in. I tell you like the income tax papers was tabulated from all the bills that was kept in files and at the end of the year we went through all those files and tabulated all those bills.

Q. Now, what did that book look like?

A. To tell the truth, it may have been two or three books. It could have been one book with wages, because, like I said a little while ago, those other bills were tabulated from the files of the bills we paid.

Q. Are you sure there was more than one book of accounts for the year 1943?

A. Well, I can't tell you for sure. That is seven

(Testimony of Mrs. Arthur Guerrazzi.)

years back, my memory isn't that good.

Q. But you do have a very clear recollection of your father's telephone conversation and what he told you about the [201] winery?

A. Yes, I do. There are certain facts I remember quite clearly.

Q. And that was a subject matter which wasn't your business, you didn't particularly have authority to discuss that with Mr. Dumbra when you told——

A. No, but it was my interest, his selling the winery too and the wine. I was part of that, I had worked all these years for him. It was my business, I thought.

Q. Now, did you purchase alcohol stamps, I mean the alcohol tax stamps, for alcohol tax requirements? A. I did.

Q. When did you get those?

A. From time to time.

Q. As you needed them? A. Correct.

Q. How large would the amount be that you would buy?

A. I wouldn't say offhand. I would say all the way from \$50, \$100, \$200, as we needed them we bought them.

Q. Did you have any on hand at the end of the year? A. I believe we did.

Q. How many?

A. That I couldn't tell. That I don't recall, the number of stamps and the value.

(Testimony of Mrs. Arthur Guerrazzi.)

Q. Well, what approximately, what would you say? [202]

A. I wouldn't give an approximate answer.

Mr. Brookes: I object. Even the widest scope of cross examination requires that the questions be relevant to the issue of the case, and this isn't an alcohol tax case.

The Court: I will overrule the objection.

Mr. Marcussen: Thank you, your Honor.

Q. (By Mr. Marcussen): I want your best recollection of the amount of stamps that you had on hand at the end of 1943, after the winery had been sold.

A. I wouldn't commit myself to that, to answer that, because I can't remember. I will tell you this, when the winery was transferred to Tiara Products Company, whatever stamps we had on hand had to be turned back to the Alcohol Tax Unit. Now, the amount I can't tell you if it was 5, 10, 50 or \$100, because I do not recall.

Q. It wouldn't be \$1,000.

A. It could be for all I know. I can't remember. We never kept that much on hand, I will say that much. We never bought that much unless we had a ready sale for it.

Q. And from time to time did you ever take the stamps back during the year, did you take them back? A. To the Alcohol Tax Unit?

Q. To the place where you had purchased them.

A. That is not permissible. It isn't permissible. Not [203] as far as I know. Once you buy those

(Testimony of Mrs. Arthur Guerrazzi.)

stamps, that is Government property, you know, stamps. There is more to those stamps than just buying a postage stamp. As for the postage stamps, you can buy them and do anything you want to do with them, but the alcohol stamps, you have to account for those.

Q. Exactly.

A. If you use \$50 a month, you file that report in that form 702 that you use these \$50 worth for so many gallons of wine and that has to be tabulated.

Q. And if you had any stamps left?

A. You would account.

Q. And you would account to the Alcohol Tax Unit for those too?

A. Yes, you would have balance on hand at the end of the month, so many stamps, balance on hand at the end of the month. So many stamps purchased and so many used and balance on hand at the end of the month.

Q. And then when you were going out of business and you don't need any more—

A. The usual procedure is to turn them back to the Government with a letter.

Q. What would you do?

A. With a letter stating the denominations you had. Say if you had ten, they in turn are to refund you that money. As far as I know, we have never received a refund. [204]

Q. You have never received a refund?

A. No, as far as I know.

(Testimony of Mrs. Arthur Guerrazzi.)

Q. And if you did return any, you would have got a refund, wouldn't you?

A. No, I wouldn't exactly say that. Mr. Hall in Healdsburg, he is the Hall Insurance Company, at the time I gave him these stamps and we filed our final report, he said that procedure takes quite a long time to get through. As far as I know, we never did receive the money for those stamps. I know there was some stamps turned in but I don't know how many.

Q. Now, if you did surrender any after the sale of the business, if you did, rather, have any on hand, you surrendered them to the Alcohol Tax Unit?

A. Yes.

Q. What did you do with these books of account or this book of account that I have been inquiring about?

A. You mean from that '43?

Q. Yes, in the year 1943, after the winery was sold or at any other time during 1943, what did you do with those books of account and where did you keep them?

A. We kept them at the office in Forestville.

Q. I think you had a safe there, didn't you?

A. We have a safe but hardly the safe that would keep these books, hardly large enough. The safe was for more—papers like insurance policies. [205]

Q. How high was the safe?

A. Well, I would say about as high as this (indicating), from where I am, not from the bottom of the floor.

(Testimony of Mrs. Arthur Guerrazzi.)

The Court: Estimate in feet, if you can.

The Witness: I don't know if I can estimate it in feet. Would it be about a foot?

Q. (By Mr. Marcussen): A height of the kind I am talking about?

A. The height I would say would be about two feet.

Q. How would you say it compares with this? (Indicating.)

A. Yes, I would say it would compare with that.

Q. As high as this table here?

A. Yes, two feet.

Mr. Marcussen: Will you stipulate that is about 30 inches?

Mr. Brookes: Yes, I will stipulate to that.

The Witness: I am not very good at feet.

Q. (By Mr. Marcussen): How wide was it?

A. I would say about there (indicating) more or less.

Q. About here? A. Maybe a little shorter.

Q. All right.

Mr. Brookes: That looks like about 26 inches.

Mr. Marcussen: 26? All right. I will stipulate to [206] that.

Q. (By Mr. Marcussen): You kept the books there?

A. I didn't keep all the books in there.

Q. Did you keep the books I am talking about in the safe?

A. I don't think so, I know in the safe we kept the bank notes that he owed the bank, policies and

(Testimony of Mrs. Arthur Guerrazzi.)

the stamps were left in the safe.

Q. And in that size of a safe, that is all you kept in there, in that safe?

A. It wasn't a very big safe, the space in the safe was about that much space after you take all the outside structure. There was a space in there with three little drawers, and like this and like that (indicating). That is as big as the safe was.

Q. Where is that safe now?

A. I have it.

Q. You have it? A. Yes, sir.

Q. It's in your home?

A. It's in my basement. You may see the safe at any time you want to.

Mr. Marcussen: Counsel, will you stipulate that the exact measurements of that safe may be obtained and submitted [207] in evidence in this case?

Mr. Brookes: I will stipulate subject to the objections to its relevancy which I am about to make. Your Honor, I have been overruled and I don't wish to be contumacious in seeming to press the objection, but Counsel has not informed the Court of what relevance that has. He has assured the Court that it is relevant, but I don't believe the taxpayers, when they come into Tax Court, as witnesses should be subjected to an examination about everything under the sun. I have no fear of what this witness is going to answer but I object to the principle of having examinations that are irrelevant, that might go into anything merely on

(Testimony of Mrs. Arthur Guerrazzi.)

Counsel's assurance that he thinks they are relevant.

The Court: I don't think the exact measurement of the safe is of sufficient importance. Was this a Hall safe?

The Witness: It was a regular office safe.

The Court: Thick walls?

The Witness: Very thick walls.

The Court: Supposed to be a fireproof safe, an old-time safe?

The Witness: I have it in the basement at home.

The Court: We can't see it there. The safe inside was, of course, considerably smaller than the outside measurements?

The Witness: Very small. [208]

The Court: You gave an estimate there about what the inside measurements were about by measuring with your hands. We don't have anything in the record to indicate the feet.

Mr. Marcussen: I have a question to ask about that. I saw the witness put up her hands for the thickness of the wall or the safe. Would you put them up again?

The Witness: I would say the walls were this thick in one of those old-fashioned safes all the way around the four sides (indicating). I would say they were all that thick. Now, I may be off a few inches on and off.

Q. (By Mr. Marcussen): Would you say six inches?

A. Yes, I would say about six inches from what I recall. I know the safe isn't too large in there.

(Testimony of Mrs. Arthur Guerrazzi.)

The safe is very old, must be very old.

Q. What did you do with the books during the year 1943?

A. As I told you, I didn't have a regular book. I kept those bills in the file. I had a file and I kept all these bills and that is how the income tax was tabulated. What was entered on the books was any books pertaining to the winery, how much wine we had on hand, how much was sold and all those records that we were really supposed to keep accurate for the Government that from time to time they came to inspect and those books were not even kept in the safe because there was no room in the safe for those books. [209]

Q. Which book are you referring to?

A. I mean the form for the Government.

Q. The 702?

A. Yes, they were not kept in the safe.

Q. I am not talking about the 702—

A. Yes, they were.

Q. I am simply talking about the books which you—in which you entered wages and other special accounts that you have referred to.

A. It was kept in the office, I wouldn't say in the safe; no, it was kept in the office.

Q. Did you give that to Andersen & Company for the preparation of the income tax return for 1943?

A. I believe Arthur Andersen—one of the representatives came up to the office to tabulate that up there and at that time I gave him every book I had

(Testimony of Mrs. Arthur Guerrazzi.)

on hand and they took their figures from those.

Q. Do you know Mr. Gould, who is sitting beside me here? A. No, I do not.

Q Did you ever see him before?

A. I believe I saw him once, if my memory is good. I didn't recognize him yesterday in the courtroom, but, if he is Mr. Gould, I must have seen him once. If I remember correct, I was in one of Arthur Andersen's accountants office one day and I came down with some books for him to help me prepare and I [210] believe Mr. Gould was there. Now, I don't know if I am right or not.

Q. Did you show him that book at that time?

A. Didn't show him any books, what books I had at that time were other books after '43.

Q. After 1943? A. Yes.

Q. Did you show him the books for 1943, this book I have been talking about?

A. I didn't show Mr. Gould nothing; I saw Mr. Gould for about ten minutes that day. That is the only time I saw Mr. Gould, and the only reason I knew it was him was because the accountant told me it was. I had never seen the man.

Q. Did you give the books to Arthur Andersen & Company?

Mr. Brookes: If Your Honor please, I object to any continuation of this line of questioning, and I am going to move to strike the examination which has preceeded it relating to this. I have been waiting for its relevance to appear. My objection to it is that it is a line—it is related to facts which have no

(Testimony of Mrs. Arthur Guerrazzi.)

relevance to the issue in this case. This is not a fraud case, there is not any issue here, any question of whether or not the records of this taxpayer in general were correct. The stipulation has been entered as to the cost of the grapes, that was, and an adjustment in the deficiency letter, and as to the adjusted basis of the winery, that was an issue in [211] the case, as to the allowance of the salaries, that was in issue in the case, and the only remaining issue is the question of whether the wine was sold for \$77,000 or whether it was sold for some other price, and this fishing expedition that Counsel is going on might go on forever, and it may end, I don't know where, and I see no relevance to the issue.

The Court: What is the relevancy?

Mr. Marcussen: The testimony that has been offered here, that these books were destroyed, the books of record. The relevancy of this is, I think the evidence will show, that the income tax returns were prepared from that.

Mr. Brookes: Of what relevance is it to prove that?

Mr. Marcussen: There are other matters than that. It shouldn't be required to——

Mr. Brookes: May I point out that the income tax returns must have been prepared in February, March or April of 1943, and that the testimony of Mr. Particelli establishes the date of the destruction of the records by the accidental fire as being several months, at least, after that. Mr. Particelli

(Testimony of Mrs. Arthur Guerrazzi.)

has testified that he and his family continued to live in their establishment where the vineyard was at Forestville for approximately a year after the sale of the winery, and he further testified that was the location of the records until he sold that property; that he then moved down to what I think he calls Rincon Valley, to Santa Rosa, and the records were transferred [212] there and placed in the barn, and it was there that the fire occurred, and that the date of that was over a year after December, 1943, and the preparation of the income tax returns then must have been made—done at least nine months before that, so the existence of the records at the time of the preparation of the income tax returns must be obvious, and it proves nothing to establish their existence at that time.

The Court: What is it you want to find out from this witness by those books?

Mr. Marcussen: If Your Honor please, I want to find out what happened to those books, what was in them, that book, and what accounts were in it, and I want to get her testimony on it. Now, this witness has testified to many things involving things that she heard. I also want to impeach this witness and in addition the information is specifically needed for the purpose of analyzing the 1943 income tax return which is exceedingly vital to the issue in this case.

The Court: You have asked numerous questions of what went into the books.

Mr. Marcussen: I should also like to find out

(Testimony of Mrs. Arthur Guerrazzi.)

what she did with them, if she——

The Court: I will overrule the objection to that extent, at least, at this time.

Q. (By Mr. Marcussen): Did you take the books I have been talking about [213] containing entries that you made pertaining to expenses and income for the year 1943 to Arthur Andersen & Company?

A. No, Arthur Andersen & Company saw it in Forestville.

Q. But you never took it to him at any time?

A. No, sir, and if I—when I did see Mr. Gould, if he is the man I saw in Arthur Andersen's office, it wasn't in '43. It was about four years ago, if he is the man I saw. I went down to Arthur Andersen & Company for other purposes to show them the books because they have been keeping the books ever since, to show how I was getting along with the books, because they helped me make the entries from time to time, to show how to do it, and that was four years ago.

Q. And so far as you know, that book was never given by you, at any rate, to Arthur Andersen at any time, is that correct?

A. No, as far as I know, because Arthur Andersen made that, the books, he tabulated that income tax up in Forestville.

The Court: Did he see the books at that time?

The Witness: Arthur Andersen saw all the records we had up there, the bills and books if there was any books, the bills, the bank deposits.

(Testimony of Mrs. Arthur Guerrazzi.)

Q. (By Mr. Marcussen): Who was the man from Andersen & Company?

A. One was Mr. Oefinger, and I believe there was also one other man. [214]

Q. Did you see Mr. Oefinger here in the courtroom? A. I did.

Q. Did Mr. Oefinger or anybody else from his office take down the contents of the entries in that book on a piece of paper or in any other manner?

A. They must have taken the entries down in order to file the income tax forms.

Mr. Marcussen: That is all, if Your Honor please.

The Court: That is all, Mrs. Guerrazzi.

(Witness excused.)

Mr. Brookes: I would like to call as my next witness, Mr. Oefinger.

Whereupon

GEORGE OEFINGER

was called as a witness on behalf of the Petitioner and having been first duly sworn, testified as follows:

Direct Examination

The Clerk: State your name and address, please.

The Witness: George Oefinger, 405 Montgomery Street, San Francisco, California.

Q. (By Mr. Brookes): Mr. Oefinger, what is your occupation?

A. I am a Certified Public Accountant.

(Testimony of George Oefinger.)

Q. Are you connected with any firm of Certified Public Accountants? [215]

A. Yes, I am a partner in the firm of Arthur Andersen & Company.

Q. Are you—were you acquainted in 1943 with Giulio Particelli? A. Yes, I was.

Q. Did you perform any services for him at any time? A. I did.

Q. Did you—what years did you do so?

A. My first connection with Mr. Particelli was along about September, 1943, at which time he was referred to us by one of the bankers in Sebastopol for the purpose of assisting him in the preparation of the declaration returns.

Q. Do you recall any reason why the bank referred Mr. Particelli to you?

A. Yes, I believe it was because Mr. Particelli felt that he required income tax assistance in connection with the preparation of his returns.

Q. Were you employed by Mr. Particelli to supervise his records or make an audit?

A. We made no audit or supervision of his records, no, sir.

Q. Mr. Oefinger, the record shows by stipulation that in December of 1943, Mr. Particelli sold certain wine and winery known as the Lucca Winery to the Tiara Products Company. The record also shows that there was an agreement of sale entered [216] into between Mr. Particelli and Mr. John Dumbra for these properties and that the Tiara was the undisclosed principal of Mr. John

(Testimony of George Oefinger.)

Dumbra who entered into the contract with Mr. Particelli. Did you have any knowledge of the existence of these facts prior to my telling you that the record showed them? A. Yes.

Q. How did your knowledge of that fact come about?

A. Well, it came about in this way. It was early in December, 1943, that Mr. Particelli and Mr. John Dumbra and an accountant of his, I believe from Sacramento, came to my office to discuss a proposed sale by Mr. Particelli of his winery and wine to Mr. Dumbra.

Mr. Marcussen: Who did you say came with him?

The Witness: He had an accountant, I believe from Sacramento, California, who came along with Mr. Dumbra and Mr. Particelli.

Q. (By Mr. Brookes): Were there later conferences between these parties at which you were present?

A. Not between all of them, no. As a matter of fact, at that conference, I believe it was, that a decision was reached as to the sale of the wine and winery.

Q. How did they happen to come into your office?

A. Well, I had had contacts with Mr. Particelli earlier [217] in the year in connection with the preparation of his declaration returns and at that time he had inferred that he had a number of dif-

(Testimony of George Oefinger.)

ferent people up there in Forestville from time to time——

Mr. Marcussen: I can't hear you, will you speak louder?

The Witness: —— and at that time he inferred that he had had a number of different people up at Forestville from time to time who were interested in the acquisition of his winery, and he realized, of course, that he had certain tax problems that were involved and that was the purpose of his visit to my office.

Q. (By Mr. Brookes): Then he brought the parties into your office but he was consulting you?

A. That's right.

Q. Is that what you mean?

A. That's right.

Q. What did he consult you about, Mr. Oefinger?

A. Well, his primary concern was about the sale of the wine. In other words, he realized, as I had told him before and I think he knew of his own knowledge, that there was a ceiling price that had been established by the OPA on the sale of wine, and he knew because I had so informed him that if any wine was sold in bulk in excess of that—of that ceiling price, he was subject to penalties which might go as high as [218] three times the difference between the price at which it might be sold and the ceiling price.

Q. When he brought these parties to your office, did he consult you then about the ceiling price?

A. Yes, he did. As a matter of fact, he asked

(Testimony of George Oefinger.)

me to make a determination as to what the ceiling price would be in this particular instance, which I proceeded to do.

Q. What did you tell him was the ceiling price?

A. I told him after I completed the computation. I told him in my judgment the ceiling price for that wine was not in excess of 28 cents a gallon.

Q. Did he ask you whether the ceiling price applied to the sale of his entire wine stock?

A. Yes, he did. I informed him that it did. In my judgment, it did.

Q. At this conference, you have referred to the agreement for the sale of the wine at this conference, and I think you also said that at that same conference he agreed to sell the winery?

A. That's right.

Q. Did I understand you correctly?

A. Oh, yes, that's correct.

Q. You have testified that he, if I recall your testimony correctly, that he seemed to be interested in the ceiling price of the wine and consulted you in connection with that? [219]

A. That is right.

Q. Was it your impression at the time he came to your office that he had agreed to sell the wine or that he had entered into any agreement at all?

A. It was my understanding that no agreement whatever had been entered into and that all that these parties came to me primarily for the purpose of determining what the ceiling price on the wine

(Testimony of George Oefinger.)

was so that they could agree or disagree upon a price.

Q. Then how did the winery come into the picture?

A. Well, the winery was to be sold at the same time: That was my understanding, that Mr. Dumbra was interested not only in purchasing the wine, but the winery as well.

Q. Was there any discussion of the price to be paid for the winery in your presence?

A. Well, that all came out, of course, during the course of the conference, yes. That is, after I had told him what the ceiling price would be on the wine. Then they did discuss what would be paid for the wine and what would be paid for the plant.

Q. Was that last word "winery"?

A. Yes, winery; I said "plant" but I meant winery, of course.

Q. In referring to the ceiling price of 28 cents, Mr. Oefinger, was that 28 cents a gallon? [220]

A. 28 cents per gallon.

Q. Does that include the State and Federal Alcohol Taxes? A. No, sir.

Q. They would be added to that?

A. They would be added to that price, that is right.

Mr. Marcussen: Mr. Reporter, will you read the last few questions and answers?

(The last four questions and answers were read by the reporter.)

Q. (By Mr. Brookes): Mr. Oefinger, do you

(Testimony of George Oefinger.)

know the price that the parties agreed on for the sale of the wine? A. Yes, sir, I do.

Q. What is it?

Mr. Marcussen: I object to that on the ground it is hearsay.

Mr. Brookes: Your Honor, he was present.

The Court: Overruled.

The Witness: That price was \$77,000, computed by multiplying 275,000 gallons by 28 cents per gallon.

Q. (By Mr. Brookes): Did you hear the parties state the price of the winery? A. I did.

Q. What did you hear them say?

A. \$273,000.

Q. Did you hear anything else that the parties stated that would indicate to you that either of those prices was not the real price? A. None.

Mr. Marcussen: I object to that as calling for the conclusion of the witness, if Your Honor please; it requires his interpretation.

The Court: I will sustain the objection.

Mr. Brookes: I will attempt to restate the question. Before doing so, may I state my purpose in the line of questioning I am now entering upon? The Government has stated that in its opinion this was a sham transaction. I suppose by that the Government must mean that the agreement was something different than the face of it. This witness has testified that he was present at a conference between the buyer and seller at which they stated the price, and he negotiated a sales contract. I don't know how

(Testimony of George Oefinger.)

it's possible to prove that the transaction was a sham transaction unless there be a certain amount of what might be regarded as circumstantial evidence leading to it. Now, I will attempt to refrain from leading the witness.

Mr. Marcussen: If Your Honor please, it hasn't been established that this witness is a lawyer and is qualified to [222] pass—to make a conclusion or give an interpretation in the legal effect.

The Court: That would not be competent if he was a lawyer.

Mr. Brookes: I am not asking for that, Your Honor, I am attempting to get the witness' impression if these parties were sincere.

The Court: You ask him on facts to which he was a witness, statements that would come in here as facts, to which he was a witness.

Q. (By Mr. Brookes): Mr. Oefinger, did you hear any statements by either Mr. Particelli or Mr. Dumbra indicating that Mr. Dumbra was paying more than \$77,000 for the wine?

A. None whatever.

The Court: Wait a minute.

Mr. Marcussen: I object on the ground it calls for the conclusion of the witness.

The Court: I will sustain the objection. What we are interested in here is what occurred at that conference, not what he might infer as to what didn't occur.

The Witness: I will be glad to explain what occurred if you want.

(Testimony of George Oefinger.)

Q. (By Mr. Brookes): Will you state what occurred at the conference? [223]

A. Yes, after I computed the ceiling price on this wine and determined that ceiling price was \$77,000, Mr. Particelli and Mr. Dumbra got together and they agreed upon a price for the wine and the winery. They said the price for the wine shall be \$77,000, and the price for the winery shall be \$273,000, and after they had come to an agreement, Mr. Particelli contacted an attorney by the name of Fred Foster. He was brought into the picture and he drew up the agreement on that basis.

The Court: That is all you heard?

The Witness: I heard all of that.

The Court: And that is all you heard?

The Witness: That's right.

Q. (By Mr. Brookes): Did you state whether you were present at a later conference between Mr. Dumbra and Mr. Particelli?

A. The agreement was signed that day; I don't believe we had a later conference. If so, it had no relation to this deal.

Mr. Marcussen: Mr. Brookes, may I interrupt to ask the reporter to make a notation in his record of the question immediately preceding the last one and the answer?

The Court: We will take a recess for about 10 minutes.

(Whereupon a recess was had.) [224]

The Court: You may cross examine.

(Testimony of George Oefinger.)

Cross Examination

Q. (By Mr. Marcussen): Now, Mr. Oefinger, I think you testified that you had advised Mr. Particelli that if he sold the wine in connection with the winery that the OPA regulations, price regulations, would apply to the sale of the wine, is that correct?

A. If he sold the wine, that would have to be at the OPA ceiling prices, that is right.

Q. Now, if you told him that, that was wrong wasn't it?

A. Nothing wrong with that, no sir.

Q. You still think that is correct advice?

A. Sale of the wine at a figure in excess of the OPA?

Q. I am talking about the sale of wine and the winery together all in one transaction. That is the way you understood that occurred, isn't it?

A. No.

Q. That is not what you said?

A. I said a price was fixed on the wine and a price on the winery.

Q. Did you see the memorandum agreement that they signed? A. The contract?

Q. Yes, certainly.

A. Now, I will show you Exhibit A-1 attached to the stipulation in these proceedings and ask you to look at that, [225] and I will ask you if that is the agreement as you remember it?

A. That's right.

Q. Is that it? A. That is it.

(Testimony of George Oefinger.)

Q. Now, did they mention that figure of \$350,000 to you?

A. The \$77,000 plus the \$273,000 equals——

Q. Did they mention the figure of \$350,000 to you, Mr. Oefinger? A. When?

Q. At the conference that you had with these parties, was Mr. Dumbra present?

A. Mr. Dumbra was present.

Q. And Mr. Particelli?

A. Yes, he was present.

Q. And that was a conference that you had after a previous conference with Mr. Particelli alone, is that right? A. That's right.

Q. Now, at that conference at which both parties were present, did they mention the figure of \$350,000?

A. The figure of \$350,000 was mentioned, sure.

Q. Yes, it was. Now, that was the total price for the sale of the wine and the winery?

A. That is the total price in accordance with the [227] provisions of the agreement, certainly.

Q. Now, if you advised them that the sale of the wine in that manner together with the winery must be subject to the OPA regulations, your advice was incorrect, wasn't it? A. No, sir.

Q. You don't know that to be a fact?

A. No, sir.

Q. Did you look up the OPA regulations and interpretations?

A. I looked up the OPA regulations, yes, sir.

Q. And did you refer to the interpretations

(Testimony of George Oefinger.)

under those regulations at all?

A. I referred to everything that was in the record on it at that time, yes, sir.

Q. At that time? A. Yes.

Q. Did you ever look up or recall seeing an interpretation given by the Office of Price Administration on September 22, 1942, to this effect: "The sale of a going business where a person sells his business as such, including a sale of goodwill, as well as his stock of goods, the sale is not subject to the regulations, although there is involved a sale of commodities. The transaction is not within the framework of the regulations, and the sale of the commodities may be regarded as simply a part of the sale of going business, which as such is not controlled." [228]

Now, do you ever recall seeing an interpretation of that effect?

A. I will say this, I don't recall having seen that, but had I seen it, I would still not follow it because I would consider it contrary to the regulations, yes, sir.

Mr. Marcussen: If Your Honor please, I move that the answer be stricken on the ground that it was not responsive to the question in so far as he considered it to be contrary to the regulations.

The Court: Well, it was non-responsive to this particular question. You asked him whether his advice was wrong, previously, in previous questions; as far as this particular question is concerned, it

(Testimony of George Oefinger.)

was non-responsive. You asked him if he had seen this regulation.

Mr. Marcussen: Yes.

The Court: That part of the answer may be stricken which follows his response to whether or not he had seen that interpretation of the regulations.

Q. (By Mr. Marcussen): Now, if you had seen that regulation when you gave—purported to give advice about this situation, Mr. Oefinger, you would have called it to their attention, would you?

A. That is not a regulation, as I recall it, and I think I stated that that was an interpretation.

Q. You are correct, that is an interpretation.

A. The regulations—

The Court: Just answer the question.

Q. (By Mr. Marcussen): Would you have called this interpretation to the attention of Mr. Particelli and Mr. Dumbra if you had seen it?

A. Not necessarily. Not if I didn't think it was the correct interpretation of the regulations.

Q. You wouldn't have thought that had to be called to their attention at all?

A. Not necessarily.

Q. Well, I think that will do on that. Now you referred to a first conversation that you had with Mr. Particelli some time in the latter part of 1943 when he consulted you about his estimated—his declarations of estimated tax for 1943?

A. That's right, along about September, 1943.

Q. Yes, and did you also testify that at that time,

(Testimony of George Oefinger.)

he had said that he had several inquiries concerning the possible sale by him of his wine and winery together?

A. Not necessarily at that time. Not necessarily on the occasion of my first conference with him.

Q. In subsequent conferences?

A. Yes, because I saw him at different periods all through the balance of that year.

Q. Did you explain to him that the sale of his winery [229] would be subject to capital gains tax and that the sale of his wine would be subject to ordinary—the ordinary tax on ordinary income?

A. Yes, certainly.

Q. You explained the difference to him?

A. Certainly.

Q. Now, how did you arrive at a price of 28 cents in giving him your advice?

A. Well, to give you that definitely, I would have to refer to my working papers.

Q. Do you have them with you? A. Yes.

Q. Would you refer to them.

A. I would be glad to. Shall I proceed?

Q. Yes, may I see the page you are referring to?

A. Well, I am referring to all of these notes that we made at that time. The base price on table wine at this time under the OPA Regulations was 21-1/2 cents. Then there was a permitted tax increase in cost per gallon of .0519, and then there was a blanket increase allowed under the regulations of .0085. That totaled .2754. We used 28 cents as being the nearest cent.

(Testimony of George Oefinger.)

Q. In other words, you applied—took the figure of some 21 cents? A. 27.54. [230]

Q. No, the original figure was 21 cents, and where did you get the figure of 21-1/2 cents?

A. That figure is mentioned in the regulations.

Q. What regulation?

A. The OPA Regulation covering the sale of wine.

Q. Yes, and when was that particular regulation issued?

A. Well, I can't tell you that offhand, but it was in existence.

Q. Don't your notes show it?

A. No, I don't necessarily make a record in my notes of the exact date on which the regulation was issued.

Q. Did you prepare a protest which the taxpayer filed in this case with the Bureau of Internal Revenue? A. Yes, I did.

Q. Do you have a copy of that before you?

A. Yes.

Q. Will you refer to that?

A. Yes, that's right, I did.

Q. Now, will you refer to page 5 of that?

A. Yes, sir.

Q. Of that document? A. Yes.

Q. And I will ask you to look at that page and ask you whether that refreshes your recollection as to what regulation you are referring to? [231]

A. Supplemental Regulation No. 14 under the General Maximum Price Regulation.

(Testimony of George Oefinger.)

Q. Do you know when that was promulgated?

A. Not offhand, no.

Q. Then that is where you got the figure of 21-1/2 cents from?

A. Under Section 2.2, yes, Maximum Prices for California Grape Wine.

Q. And then I will refer you to page 7 of that Protest.

A. Yes sir.

Q. And at the foot of the page you will note a tabulation?

A. That's right.

Q. And calling your attention to that tabulation, it refers to permitted increases after November 1, 1942, doesn't it?

A. That's right.

Q. Now, can you identify the regulation from which you received the information pertaining to the permitted increases?

A. Well, under Section 2.2, paragraph b, it states, "Permitted increase, on and after November 1, 1942, any vintner may add to the maximum prices established for him under said section 1499.2 or to his base maximum prices for California grape wine established under (a), a permitted increase per gallon for dessert and table wine computed as hereinafter prescribed."

Q. The permitted increases, in other words, are, according [232] to you, part of that same regulation to which you referred?

A. That's right.

Q. Now, I take it that in your work you have had considerable occasion to advise people about these regulations in connection with their accounting problems, that is, the OPA price regulations?

(Testimony of George Oefinger.)

A. Not too much, no.

Q. Your office would, wouldn't it?

A. The office would as a whole, yes.

Q. And you had the OPA service in your office?

A. That's right.

Q. For that purpose? A. That's right.

Q. And there were men who were in your office who were quite familiar with that?

A. That's right.

Q. And you did a considerable amount of that work? A. Not too much, no.

Q. You felt you had done enough to advise this man, Mr. Particelli, competently, did you?

A. I felt so, yes.

Q. And how long had you been associated with the firm of Arthur Andersen?

A. Since February, 1927.

Q. And you are a partner in this firm? [233]

A. That is right.

Q. How long have you been a partner?

A. For about six years.

Q. Now, did you ever hear of M.P.R. 445, Amendment 3?

A. No, I can't say specifically that I did, know it by that number.

Q. Were you familiar with the fact that a regulation was adopted on October 7, 1943, effective October 1, which permitted a winery that didn't have a higher ceiling than 28 cents for red wine and 33 cents for white wine to use those figures as their ceilings? A. No.

(Testimony of George Oefinger.)

Q. You weren't familiar with that?

A. No.

Q. On the occasion that Mr. Particelli or someone on his behalf first consulted you in 1943, did you go to his store in Forestville?

A. The first communication I had with him was by way of letter, yes, after that I did, in connection with his preparation of amended declaration of returns and also in connection with the preparation of the income tax return for the calendar year of 1943. I visited the place up in Forestville.

Q. Did you talk to Mrs. Guerrazzi?

A. Yes.

Q. Did you ask her for the records? [234]

A. That's right.

Q. For the year 1943? A. That is right.

Q. Did they present you with those records?

A. That's right.

Q. And did she give you a book containing information concerning expenses and income?

A. That's right.

Q. Did you take that book with you?

A. I did not.

Q. You left it there?

A. I left it there.

Q. Did you ever have that book in your office?

A. Not to my recollection.

Q. Did you take down any information from that book? A. I did.

Q. And did you prepare the 1943 income tax return? A. I did.

(Testimony of George Oefinger.)

Q. And did you use that information?

A. I did.

Q. Do you have the book now?

A. I do not.

Q. Do you know where it is? A. No, sir.

Q. Do you have a copy of the 1943 return with you? [235] A. Yes, sir, I do.

Q. Will you refer to it, please? I call your attention to——

A. Wait until I see if I can find it.

Q. Oh, I beg your pardon.

A. I have here only the pencilled copy from which the typed copy, I presume, was prepared.

Q. Can you check it and ascertain to your satisfaction whether or not it is complete?

A. Yes, I would say it is complete.

Q. Now, will you please refer to Schedule C(2) which appears to be a typewritten statement attached to the return?

A. Schedule C(2), yes, sir.

Q. Did you get the figure of wine sales therein in the amount of \$240,653.22 from the books?

A. Not in complete detail, no.

Q. Do you know how that figure is composed, any detail on it? A. Yes, I have a detail.

Q. Will you state it, please? Just tell me when you find it, Mr. Oefinger, and I would like to ask you another question before——

A. I am back on my working papers now, because, as I mentioned, that paper was not all taken——well, that is, made up—— [236]

(Testimony of George Oefinger.)

Q. Don't answer the question as to what it is made up of, please. You have located detail on it?

A. I have located the detail making of \$240,-653.22, that is right.

Q. Before I go further with that, I want to ask you, did you ever recall showing this book of accounts to Mr. Gould, the Revenue Agent here?

A. No, I don't recall it, no.

Q. Do you know whether you did or—strike that. Would you say that you never did?

A. I don't recall ever having shown it to him, no.

Q. But you are not certain whether you ever did? A. I am not absolutely certain, no.

Q. Now, I also wanted to ask you about Arthur Andersen & Company. They are a national firm of accountants, are they not? A. That's right.

Q. Of rather high repute, aren't they?

A. That's right.

Q. Now, will you give me the breakdown?

A. The breakdown?

Mr. Brookes: Before the witness answers, I want to interpose my usual objection to the irrelevancy of the line of questioning. There is no issue between us on the point which Counsel is now interrogating the witness. It is a fishing expedition as near as I can tell and for what purpose I have no idea. [237]

Mr. Marcussen: If Your Honor please, it is very pertinent to establish just how the taxpayer computed his income. I want to establish by this witness what the items are that went into the sales. The

(Testimony of George Oefinger.)

taxpayer has introduced testimony on his behalf here to the effect that he sold at ceiling prices. Now, if I must explain to Counsel, I will explain to Counsel that I am going to demonstrate that he didn't sell at ceiling prices and that he sold at substantially in excess of ceiling prices by the line of questioning I am pursuing at this time. That is information, and that is an aspect of the case.

The Court: I think on the question of relevancy, probably the objection should be overruled. It is overruled.

Mr. Brookes: Mr. Reporter, will you read the question back?

(The last question was read by the reporter.)

The Witness: Breakdown of the \$240,653.22 figure, right?

Q. (By Mr. Marcussen): Yes.

A. Well, that is made up of \$136,250.77, \$24,040.00, \$2,522.01, \$77,000.00, \$840.44.

Q. Where did you get the figure of \$136,250, some odd dollars?

A. That figure came out of the day book, this little [238] black book that you referred to.

Q. How big was that book?

A. Oh, I would say it's about 15 inches by 6, 7, 15 by 7, 15 by 8, possibly.

Q. Now, where did the next figure come from, of \$24,040.00?

A. That is an adjustment figure here which it looks like represented receivables that were collected.

(Testimony of George Oefinger.)

Q. I didn't hear that.

A. Receivables, apparently, that were outstanding at the beginning of the year and were collected during the year 1943.

Q. Receivables outstanding at the beginning of the year that were collected during 1943?

The Court: Beginning of the year 1943?

The Witness: That is right. The same with the \$2,522.01.

Q. (By Mr. Marcussen): Why were they different accounts?

A. That I don't know. I can't tell you that definitely.

Q. Your papers don't show where you got that sum? A. No, no.

Q. And the \$77,000 is the wine of the Tiara sale? A. That's right.

Q. What about the \$840.44 item? [239]

A. The \$840.44, my papers don't clearly indicate just what that represents, but I think it has something to do with retail sales.

Q. Retail sales? A. Yes.

Q. At that store? But you don't have that for sure there? A. No.

Q. Now, did you ask any questions about the \$136,250.77?

A. Well, the \$136,250.77 figure came out of this day book. I don't normally ask questions, but all of the accounts that are in the book when I am preparing a tax return, some of—you have got to assume that they are correct until you make a de-

(Testimony of George Oefinger.)

tailed audit, of course. In this case we made no audit, as I intimated earlier.

Q. You examined all the records that were available?
A. That's right, that's right.

Q. What did you mean, then, that you didn't make a detailed audit, what did you mean by that?

A. If you are going to make a detailed audit, of course you have got to go into these things much more thoroughly than we did in the—you would have to send out confirmations on all the receivables, undoubtedly check all the expenses, all the invoices, and do a considerable amount of work before we could satisfy ourselves that the accounts correctly presented the [240] values of operations for the period.

Q. Did you file this return on the cash or accrual basis?

A. That return was filed on a cash basis.

Q. And I suppose you had ascertained that those receivable accounts had actually been collected?

A. That's right.

Q. And I presume that you also ascertained that the 136,000 some odd dollars represented sales that had been made during the year 1943 and for which the money had been received?

A. For which the money was received in any event, yes.

Q. Now, referring to the item of \$28,040.73 which is listed beneath that as inventory of wine, January 1, 1943, where did you get that figure?

A. That figure, as I recall, came off the 1942 re-

(Testimony of George Oefinger.)

turn. That was the closing inventory at the end of 1942.

Q. Did you prepare that return?

A. We did not prepare the '42 return, no, sir.

Q. Where did you get the figure of \$53,303.68 for wine and liquor purchased?

A. That is a combination of six items; I will call them off if you like.

Q. Will you please?

A. Wine purchased, Roma Wine Company, \$6,306.07; Northern Sonoma Wines, \$21,452.98; Italian Swiss Colony, \$10,769.24; beer purchases, \$1,779.65; wines and liquors, \$2,757.74; wine [241] stamps, \$10,238.00.

Q. Do you know what the tax is per gallon on the sale of dry wine?

A. I don't recall offhand, no.

Q. Now, referring to the next item, the grapes purchased, \$117,618.73, what is your source on that?

A. That was this day book, the so-called day book.

Q. Was it a lump sum in the day book?

Mr. Brookes: Your Honor, I object to the question and also ask that the last question and answer be stricken from the record. There was no ceiling price on grapes. We were told by Counsel that the relevance of this line of questioning was that he was going to show that Mr. Particelli was selling his wine at over-ceiling price. There is no issue between us as to the cost of the grapes, as to their basis or figure of that kind. I see no relevance to any of the

(Testimony of George Oefinger.)

issues in the case and I do not see that this has the slightest tendency to prove what Mr. Marcussen said he was seeking to prove.

The Court: Do you concede that statement?

Mr. Marcussen: I will withdraw the question, Your Honor.

The Court: All right.

Q. (By Mr. Marcussen): Now, referring to the item of labor cost, where did [242] you get that?

Mr. Brookes: Your Honor, the same objection. There was no ceiling on the price that this man could charge for day labor.

Mr. Marcussen: If Your Honor please, I would like to establish that fact for the same reason that I advanced with respect to the wine sales.

Mr. Brookes: Your Honor, he means that he is about to prove what sales of wine for over a price was in excess of ceiling by proving what the labor costs were. There is no tendency of labor cost to prove what the ceiling price of wine was or the sales or anything of that sort.

Mr. Marcussen: If Your Honor, please, I am not prepared at the present time to submit to Counsel a detailed computation of what my figures are. I do know, however, that figure is relevant and I am advised that it is relevant by an accountant and I would like to have that in the record for the purpose of establishing the computation which I, in case——

Mr. Brookes: He has identified it was the sales of wine for a price in excess of the ceiling. I sub-

(Testimony of George Oefinger.)

mit to Your Honor that neither his assurance that he thinks it is relevant nor the assurance that he states an accountant told him it was relevant are sufficient.

Mr. Marcussen: I will say, if Your Honor please, there have been a number of businesses in which this taxpayer [243] was involved during the taxable year. He had a retail store, he sold some wine at retail, some at wholesale, and he also made bulk sales of wine in large quantities. Now, I want to know why that is allocable, what was the labor cost that is identified on that figure on the return. That is what I want to know and I want to know just what department of the taxpayer that is properly chargeable to, to determine the income.

Mr. Brookes: This is not an audit of the taxpayer's income tax returns. This is a trial before the Court on one issue. There is no assertion of an additional deficiency, the audit has been concluded. Certain deficiency has been asserted, certain deficiency stipulated to. One has been withdrawn and the remaining at issue.

Mr. Marcussen: If Your Honor please, the Government contends that this contract and the income reported from it have been reported as a sham, and I wish to show that the taxpayer actually made sales above the ceiling prices, and, in order to do that, I have got to identify certain of these items on this return.

The Court: Does it pertain to the item here involved?

(Testimony of George Oefinger.)

Mr. Marcussen: Yes, it does, Your Honor. I think I know what the item is.

The Court: I will overrule the objection. Frankly, it's a little difficult for me to see the relevancy.

Mr. Brookes: May I have an exception? [244]

The Court: You may have an exception.

The Witness: I take it you refer to the \$3,874.68, is that correct?

Q. (By Mr. Marcussen): No, I am referring to the item of labor cost. A. \$11,000?

Q. \$11,553.34?

A. Well, that is made up of two items, one of which appeared on that black book.

Q. Will you state them?

A. That was referred to as labor during crushing, \$1,553.34, and then there was a \$10,000 bonus that was paid at the end of the year.

Q. To whom?

A. Mrs. Guerrazzi and Arthur Guerrazzi.

Q. Is it customary to put bonuses into labor costs? A. Certainly.

Q. Did you ascertain what that payment was for? A. Payment for services, I presume.

Q. Did you ascertain what services they were?

A. No, that is not a part of my—

Mr. Brookes: My objection, I think this illustrates rather forcibly—we have stipulated that this very item is properly deductible in computing the income for this year. What relevance has this question? [245]

(Testimony of George Oefinger.)

The Court: I think they are developing into quite a fishing expedition here at this point.

Mr. Marcussen: I will withdraw the question.

The Court: Some of it I don't see the relevancy of.

Mr. Marcussen: I will withdraw the last question.

Q. (By Mr. Marcussen): I hand you the 1943 income tax return of Mr. Particelli, Mr. Oefinger, and ask you whether you can identify it?

A. Yes, that is it; I am sure that is it.

Q. Now, with respect to the other items appearing on this page, the same schedule C(2) on the return—strike that please.

Mr. Marcussen: If Your Honor please, I would like to offer the return in evidence as Respondent's next exhibit in order.

The Court: Admitted as Respondent's Exhibit S.

(Whereupon the document marked Respondent's Exhibit S for identification was received.)

Q. (By Mr. Marcussen): Now, referring to that schedule, Mr. Oefinger, you will note it contains a list of expenses there? A. That's right.

Q. Did they all come out of that day book too?

A. Substantially all of them; there may be a few [246] adjustments, of course, that were made to some of those accounts.

Q. But substantially all of the information comes from that book? A. That's right.

Mr. Marcussen: That is all, Your Honor.

(Testimony of George Oefinger.)

The Court: Redirect examination.

Redirect Examination

Q. (By Mr. Brookes): Mr. Oefinger, do you remember the date of the enactment of the Price Stabilization Act?

A. I don't recall it offhand now.

Q. Would it refresh your memory to tell you that it is known as the Price Stabilization Act of October, 1942?

A. Yes.

Q. Mr. Marcussen asked you whether in your study of the ceiling price applicable to this wine, you ran into the—encountered the ruling which I—an interpretation which I think he said was dated September 22, 1942; as I recall, you stated you did not find it?

A. That's right.

Q. Would you have considered rulings dated prior to the enactment of the Price Stabilization Act relevant to your inquiry?

A. Certainly not.

Mr. Brookes: I have no further questions. [247]

The Court: That is all, Mr. Oefinger. We will adjourn until 2:00 o'clock this afternoon.

(Witness excused.)

(Whereupon, at 12:30 p.m. a recess was taken until 2:00 o'clock p.m. of the same day.) [248]

Afternoon Session

The Court: You may proceed.

Mr. Brookes: I would like to call my next witness Mr. A. M. Mull, Jr.

Whereupon

A. M. MULL, JR.

was called as a witness on behalf of the Petitioner and having been first duly sworn, testified as follows:

Direct Examination

The Clerk: State your name and address, please.

The Witness: A. M. Mull, Jr., 515 Capitol National Bank Building, Sacramento, California.

Q. (By Mr. Brookes): Mr. Mull, will you state your occupation?

A. I am an attorney-at-law, regularly admitted in all of the courts of the State of California, in the Federal Court for the Northern District of California, and Supreme Court of the United States Circuit Court, Ninth Circuit.

Q. In what city do you have your office?

A. Sacramento, California.

Q. Are you the A. M. Mull, Jr., who is President of the State Bar? A. Yes, I am.

Q. Mr. Mull, I hand you stipulated Exhibit B-2 on which the name A. M. Mull, Jr., is signed as attorney for the Tiara [249] Products Company. Do you recall having seen and signed that paper?

A. Yes, I do.

Q. Then you are the A. M. Mull who signed that as attorney for the Tiara Products Company?

A. I am.

Q. Had you represented either John Dumbra or the Tiara Products prior to this transaction?

A. I don't recall having represented Tiara Prod-

(Testimony of A. M. Mull, Jr.)

ucts Company, but I had represented John Dumbra.

Q. In the course of representing Tiara Products Company, in the transaction in which you signed your name as attorney in fact to the Exhibit B-2, did you learn what the business of the Tiara Products Company was? A. Yes, I did.

Q. What was it? A. Wine business.

Q. All kinds of wine?

A. Well, I don't recall whether they dealt in all kinds of wine, but I do know that they dealt in dry wines and sweet wines.

Q. Will you please, Mr. Mull, tell the Court what you know of this transaction in which the Exhibit B-2 is a part?

A. May I have the exhibit?

Q. Yes. If it will refresh your memory, Mr. Mull, [250] Exhibit B-2 is one of the two documents which has been stipulated as the exhibit signed by you.

A. Well, to the best of my recollection, I will try to review—I gave Mr. Marcussen a number of papers from my file.

Q. This is stipulated to be a copy, a true copy of the document signed by A. M. Mull, Jr., on behalf of Tiara Products Company, and it states that it is the instructions to the Bank of Sonoma County for placing in escrow the check and the wine, the latter sold by G. Particelli to Tiara Products Company; Exhibit C-3 is a document signed by A. M. Mull, Jr., Tiara Products Company, Incorporated, and addressed to the Bank of Sonoma County, giv-

(Testimony of A. M. Mull, Jr.)

ing escrow instructions for placing in escrow both the Lucca Winery and check in payment for the purchase of the Lucca Winery, and I am asking you to describe for the Court your connection with the transaction.

Mr. Marcussen: If your Honor please, that is objected to on the ground that the documents speak for themselves. Mr. Mull was the attorney.

The Court: Well, he is not, as I understand it, asking what the documents show.

Mr. Brookes: I am not asking what the documents show. I will state the question differently. If I ask it in the most direct way, I anticipate an objection that I was leading the witness.

Mr. Marcussen: Thank you, Counsel. [251]

Q. (By Mr. Brookes): By whom were you first contacted in relation to the transaction in which you represented the Tiara Products Company in the purchase by Tiara Products Company of wine and winery from Mr. Particelli?

A. From John Dumbra.

Q. On what occasion did he first contact you?

A. Well, I have said, I knew that I would probably be a witness in this matter and I tried to refresh my recollection, and in my file I have quite a memorandum that I dictated on December 10, 1943.

Q. Counsel, you have reference to that memorandum from which you refreshed your recollection so that you are able to speak from your recollection?

A. To some extent. I think that I could. Whatever I say now will be my best recollection as re-

(Testimony of A. M. Mull, Jr.)

freshed from this document.

Mr. Marcussen: Can you testify without referring to the document?

The Witness: I think I can, although I won't say that my memory isn't anything of this document also.

Mr. Marcussen: You will testify then, without referring to the document?

The Witness: To the best of my ability. On December 5, 1943, I received a telephone call from John Dumbra, and he [252] asked me to get in touch with a Mr. Edmund A. Knittle, who is associated with Darrel Hodge & Company, Certified Public Accountants, in Sacramento, and to have him, Mr. Dumbra, meet him. Now, I don't recall from my own knowledge where he said to meet him, although this memorandum says at a certain place. I have no recollection. I thought—my best recollection would have been to have him meet him in San Francisco, but to meet him and go with him to close a transaction in connection with the Lucca Winery. I conveyed the information to Mr. Knittle. I don't have any independent recollection as to whether or not John Dumbra explained to me the transaction. I did convey the information that Mr. Dumbra wanted Mr. Knittle to meet him, and the next thing I heard——

Mr. Marcussen: May I interrupt just a moment. If your Honor please, I would like to interpose an objection on the ground that all of this is wholly

(Testimony of A. M. Mull, Jr.)

immaterial and has no connection with the issues in the case.

The Court: Overruled.

The Witness: The next thing that came to my attention in connection with this matter was that a document came into my possession. Now, I don't know who gave it to me, but it purported to be an agreement between John Dumbra and Mr. Particelli.

Mr. Marcussen: Are you referring to Exhibit 1-A in the stipulation? [253]

The Witness: I am not familiar with the document.

Mr. Brookes: That is a stipulated exhibit, Mr. Mull.

The Witness: Yes. I have a copy of this.

Q. (By Mr. Brookes): It was a document of which Exhibit 1-A is a copy?

A. Yes, it was, on a legal size paper.

Q. Had that document been signed?

A. The document I had was just a copy.

Q. A copy of an instrument?

A. And had John Dumbra and I think Mr. G. Particelli.

Q. Did you understand that there was an original which had been signed at that time or before that time?

A. I understood there was an original of that document.

Q. A signed original, Mr. Mull?

A. Yes, that there had been an agreement signed

(Testimony of A. M. Mull, Jr.)

by John Dumbra and G. Particelli. It was my understanding.

Q. Were you asked to do anything at that point in connection with this transaction?

A. Yes, I was.

Q. What were you asked to do?

A. I was asked to get in touch with Mr. Lorton of the Lawrence Warehouse Company for the purpose of getting him to go to Forestville to investigate the possibilities of creating a Lawrence Bond Warehouse upon the premises for loan purposes, and also to get in touch with—I don't know whether [254] this is before that or after, but to get in touch with a George Spillman at the Capitol National Bank in connection with the account of John Dumbra to be sure that there were sufficient funds there for the purpose of making good on the \$5,000 check, and I did that. I got in touch with Mr. Lorton and he said he couldn't go there personally, and Mr. Dumbra insisted that he go there personally, and a few days later, I don't know the exact date, Mr. Lorton and I met him up there at Forestville, and there were other people present at that time, but I don't recall who exactly, although I think John Dumbra was there and I think Mr. Knittle was there. I have a memoranda which indicates that that happened, and I don't have any memorandum—my memorandum doesn't show the date, it says December.

Q. Were you—did you, Mr. Mull, prepare the document signed by you which is in the record as

(Testimony of A. M. Mull, Jr.)

Exhibit B-2, which I place before you?

A. I don't recall whether I did or not. At least, I had a part in preparing it, and I know I didn't type that document. I am quite certain, to my best recollection, I didn't type it. I think it was typed probably at the Bank of Sonoma County. I have seen a copy of it and the typing isn't from my office.

Q. Do you recall whether or not you dictated it?

A. No, I don't, but I could very well have done so, but I don't recall whether I did or not.

Q. But, did you have instructions—withdraw that. Did [255] you have instructions from Tiara Products Company as to what you were to do in representing them? A. Yes, I did.

Q. Did you have instructions from Tiara Products Company what the transaction was in which you were to represent them? A. Yes, I did.

Q. When you signed this document entitled and identified in this record as Exhibit B-2, on behalf of Tiara Products Company, did you understand that the document was consistent with the instructions which you have been given by your client?

A. Yes, I did.

Q. I ask you, Mr. Mull, to look at Exhibit C-3, which likewise you testified is a copy of a document signed by you, on behalf of Tiara Products Company. Did you dictate that document, the original of this document?

A. I don't recall, but it was submitted to me. I approved it and it was probably a composite work

(Testimony of A. M. Mull, Jr.)

of the attorney for Mr. Particelli and myself. He had an attorney in the transaction also.

Mr. Marcussen: Could you identify him at this point?

The Court: Whether he is here, by name?

Mr. Marcussen: Yes.

The Witness: His name is Fred Foster, Fred J. Foster, in San Francisco. [256]

Q. (By Mr. Brookes): Is this document which you signed but which you have testified you did not dictate consistent with the instructions as you understood them that you had from your client?

A. Well, I am not positive about that. The instructions contemplated also a dealing with the Alcohol Tax Unit in connection with the transfer of certain licenses which were in the name of Mr. Particelli, and this document of December 21 was superseded by later instructions of December 28. This deal was not closed on the basis of Exhibit C-3.

Q. Yes. I had overlooked that. Exhibit D-4 is a stipulated exhibit, stipulated to be a copy of an original which likewise is signed by you and which is dated December 28.

Mr. Marcussen: We should correct that.

Mr. Brookes: There should be a date on the top.

Mr. Marcussen: Shall we stipulate about that?

Mr. Brookes: We will stipulate that the original shows the date of December 28, 1943, on the upper righthand corner.

Mr. Marcussen: On Exhibit D-4, so stipulated.

Q. (By Mr. Brookes): Is this document, Mr.

(Testimony of A. M. Mull, Jr.)

Exhibit B-2, which I place before you?

A. I don't recall whether I did or not. At least, I had a part in preparing it, and I know I didn't type that document. I am quite certain, to my best recollection, I didn't type it. I think it was typed probably at the Bank of Sonoma County. I have seen a copy of it and the typing isn't from my office.

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(Testimony of A. M. Mull, Jr.)

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Mr. Marcussen: On Exhibit D-4, so stipulated.

Q. (By Mr. Brookes): Is this document, Mr.

(Testimony of A. M. Mull, Jr.)

Mull, a copy of the original signed by you?

A. Looks like it, yes.

Q. This, then, would be your signature which appears on this copy? [257] A. Yes.

Q. Was this document, Mr. Mull, consistent with the instructions as you understood them to be given to you by your client? A. Yes.

Q. Did your client give you any other instructions in connection with this transaction?

A. Well, there were a number of other points that had to be covered in connection with it. We had—there was on contact Mr. Robert F. Wiseman of H. E. Myhall Company. They are alcohol tax advisers, and they took care of the transfer of the basic permit upon the wine, and—

Q. May I interrupt, Mr. Mull? The question probably was too broad. Were you given any other instructions by your client in relation to the terms of sale, to the terms of purchase?

A. Well, there are a lot of different items in connection with the sale, the insurance upon the title, there was fire insurance, and the alcohol tax advice.

Q. Did these other instructions relate to the price?

A. Oh, no, no. I might give you the detail of how the transaction was closed if you would like to have that.

Mr. Brookes: Are you agreeable, Counsel?

Mr. Marcussen: I think I know what you want him to say, Mr. Brookes. [258]

(Testimony of A. M. Mull, Jr.)

Mr. Brookes: I am through.

Mr. Marcussen: You are through?

Mr. Brookes: Yes, I have no further questions. I am not interested in bringing out—it's in relation to some extension that was given, and they were not material.

Mr. Marcussen: I don't think that is what the witness had in mind.

The Witness: No, I didn't know what I had in mind, I was trying to explore everything.

Mr. Brookes: I thought you were going to talk about some extensions. There were extensions given, your Honor. Will you answer, then, as you were about to, please?

Mr. Marcussen: I think you should restate the question. Will you read the question, Mr. Reporter?

(The last question and answer were read by the reporter.)

The Witness: The Tiara Products Company sent to me two checks, one for—and my memory has been refreshed on this—one for \$330,000 and one for \$15,000. Those checks were signed by the Tiara Products Company and there was no payee named in there and there was no date. I had authorization to fill in the name of the payee. I think, as I recall, the reason why there was no payee is because we didn't know whether this matter was going to be closed at the bank or the title company. I wanted to be sure that we made the checks out to [259] the proper party so I went to—I think this bank is in Sebastopol, the Sonoma County Bank, and at that

(Testimony of A. M. Mull, Jr.)

time took these two checks and made them out to Bank of Sonoma County, and put in the date, December 21.

Mr. Marcussen: I should think it would be appropriate to ask at this point how it feels to have someone send a blank check for \$330,000?

The Witness: I felt very complimented, and at that time I delivered these two checks to Mr. Hotle. I remember him quite well because his brother, I think, was a classmate of mine at high school. He was the representative of the Bank of Sonoma County. We delivered these two checks to him with the instructions—may I refer to your exhibits?

Q. (By Mr. Brookes): Yes.

A. Exhibit B-2, and C-3, both dated December 21, 1943. Now, then, later we went back, went back there, and we took the cancelled instructions of Exhibit C-3, and substituted therefor instructions D-4, and those checks that I had given him cleared. The escrow then went into effect. I think they cleared before December 31, either the 29 or 30, around there.

Mr. Marcussen: The checks?

The Witness: Yes, the two checks that I had given him.

Mr. Marcussen: Mr. Brookes, do we have those here? Where are those? We have both seen them, the originals, they [260] were not put in evidence were they?

Mr. Brookes: The stipulation states that there were two checks.

(Testimony of A. M. Mull, Jr.)

Mr. Marcussen: Did you ascertain before coming here, the date on which those checks had cleared, Mr. Mull?

The Witness: Yes, either 29 or 30.

Mr. Marcussen: The 29th or 30th, that is your best recollection?

The Witness: It was definitely, I am sure, either one of those two dates.

Q. (By Mr. Brookes): You have completed your answer, have you not, Mr. Mull?

A. I hope I have given you all the—I think there might be other things that you might be interested in, but I would be glad to answer the questions on a specific basis.

Q. Did Mr. Dumbra tell you what price he was paying for the wine?

A. Well, he—I believe there is a letter that I wrote, a memorandum of some kind, authorizing that it was \$77,000 for the wine.

Mr. Marcussen: Well, now, may I ask, do you have a recollection of this or are you relying upon this record you referred to, Mr. Mull?

The Witness: I am relying upon all the documents. I [261] can't tell at this moment whether or not—I have seen these figures, I have seen the documents again since you contacted me, Mr. Marcussen. I reviewed the file, and tried to familiarize myself with them at your request.

Mr. Marcussen: Could I interrupt to ask the reporter to read that last question and answer?

(Testimony of A. M. Mull, Jr.)

(Last question and answer were read by the reporter.)

Mr. Marcussen: Do you have an independent recollection of that apart from any letter? Do you have an independent recollection now of whether Mr. Dumbra of the Tiara Products Company told you he was buying the wine for \$77,000?

The Witness: Well, I can never say on a certain date he told me that he was buying the wine for \$77,000.

Mr. Marcussen: At any time, Mr. Mull?

The Witness: But it seems to me to be inconceivable as a lawyer that I could have drawn and supervised the drawing of these papers saying that \$77,000 was being paid, given to the bank for so much wine, and he not have told me that that was what he was paying for it.

Mr. Marcussen: But you don't remember the specific conversation with him to that effect, do you?

The Witness: I know that if I say that I knew that, you will say the date and the time and place, and I have no recollection as to any date that he—particular date that he might have said that to me, but I thought there was a memorandum [262] that I gave you—

Mr. Brookes: This is your own memorandum, Mr. Mull?

The Witness: Yes, it is.

Q. (By Mr. Brookes): Does it refresh your recollection to the point where your memory of the transaction is actually your memory of the trans-

(Testimony of A. M. Mull, Jr.)

action, and not your memory of what you read on this paper?

Mr. Marcussen: I will stipulate that this may go into evidence.

Mr. Brookes: I wouldn't like it; this is a memorandum. I am trying to get Mr. Mull's recollection; if Mr. Mull has no recollection then I have no wish. I have no wish to have any evidence on it. It appears to me that the witness is uncertain whether he has any recollection of the precise date that he was told what the precise price was. I will, therefore,—I would like to withdraw the question. I have one more, perhaps two more questions to ask the witness.

Mr. Marcussen: Very well.

Q. (By Mr. Brookes): Did Mr. Dumbra tell you, do you recall whether at any time Mr. Dumbra told you what the price was which he was paying for the wines; let me clarify that, Mr. Mull. I am not asking you to remember what the figure was, merely if Mr. Dumbra told you what the figure was at some time. [263] A. Yes, he did.

Q. Do you believe that the documents which you prepared were consistent with your instructions from him relating to the price of the wine?

A. Yes, I do.

Mr. Brookes: I have no further questions.

The Court: Cross examination.

Cross Examination

Q. (By Mr. Marcussen): Now, Mr. Mull, do

(Testimony of A. M. Mull, Jr.)

you recollect whether or not the first check for \$330,000 was attempted to be cleared and it came back with a notation of, "Not Sufficient Funds"?

A. Well, the check was sent—this is only what Mr. Hotle told me—the check was sent in.

Q. Do you know?

A. I wasn't in New York; as I recall it, Mr. Hotle stated to me that the two checks—I don't know if it was one or two—had not cleared, and I got in touch with Mr. Dumbra within a period of a day, I guess—a couple of days. They must have cleared, somebody told me that. I don't know of my own knowledge, but there was a delay of a couple—few days in there. They were not certified checks.

Q. Well now, it's a stipulated fact in this case, Mr. Mull, that on December 21, 1943, at the time Exhibits B-2 and C-3 of this stipulation which are letters dated December 21, at [264] the time that they were submitted to the bank, that there was also delivered to the bank two checks drawn by Tiara Products Company in favor of the bank in the respective amounts of \$330,000 and \$15,000, both dated December 21. Now, I want you to bear that in mind, that particular paragraph of the stipulation, and I am referring now to Exhibit B-2 and C-3. I will call you attention to the fact that the first letter addressed to the bank by Tiara Products Company by you, as attorney, states, "We are enclosing herewith our check for \$77,000 which you are to deliver to G. Particelli when he has delivered to you a bill of sale," and then it goes on, "a bill of sale

(Testimony of A. M. Mull, Jr.)

to 256,000 gallons of dry table wine located at the Lucca Winery at Forestville, California, and 19,000 gallons of dry table wine located in the Scatena Bros. Winery, Healdsburg, California," and then you are given certain instructions with respect—you are giving to the bank certain instructions with respect to that bank and that Exhibit C-3, attached to the stipulation, which opens up with a statement, "We are enclosing herewith the sum of \$268,000 which represents the purchase price of the Lucca Winery and the purchase of all the equipment and personal property now contained therein." I would like to call your attention to that and ask if you have any explanation as to why a reference is made to a check for \$77,000 for wine, and another—or rather, another sum of \$268,000 for the winery when, in fact, the checks submitted were two checks in the [265] amounts of \$330,000 and \$15,000. Can you explain that? A. I think I can.

Q. Will you do so?

A. We gave the bank \$345,000 and we told them to use \$77,000 for one purpose, and \$268,000 for another purpose. Perhaps it would have been better language to have put in the Exhibit B-2 "and hand you herewith the sum of—" as we did in the Exhibit C-3, but there was actually no check given to them. But, they certainly understood, they had \$77,000 of our money—Tiara's money.

Q. Now, do you recall whether or not Tiara Products Company gave you instructions to sell the winery immediately after that, in the next few

(Testimony of A. M. Mull, Jr.)

months following that transaction?

A. Yes, they did.

Q. After the escrow was discharged?

A. Yes, you said a few months, but I thought you might have been thinking of December. It was some time after May of 1944.

Q. Now, I hand you this typewritten sheet which is a memorandum from your file from which you refreshed your recollection a moment ago with respect to instructions you had received about \$77,000 for wine, and simply ask you to identify that.

A. This is from my file, but I don't know that I stated that I refreshed my recollection from that.

Mr. Marcussen: If your Honor please, my recollection of the testimony was that the witness did refresh his recollection from this document, and I would like to offer it in evidence as Respondent's Exhibit next in order.

Mr. Brookes: Your Honor, I object. The main function that a document taken from a witness' file, a memorandum dictated by the witness to serve his—to refresh his recollection and cannot itself serve as evidence of the truth of the facts that are stated in that memorandum dictated for his own use.

The Court: It would be hearsay in any event, whether it refreshed his recollection or not. Objection sustained.

Q. (By Mr. Marcussen): You weren't consulted by the Tiara Products Company prior to the time of the date of sale of December 6, were you?

A. About this transaction?

(Testimony of A. M. Mull, Jr.)

Q. Yes.

A. I think I have given just about what happened. John Dumbra called me, and asked me to get ahold of Ed Knittle, and I wasn't asked to do anything in connection with the transaction.

Q. You didn't advise them with respect to the legality of the OPA aspects of it or income tax aspects of it? A. At that time, or any time?

Q. Yes, prior to December 6.

A. No, sir. In fact, I knew nothing about the actual [267] details until this document, as I recall, was handed to me.

Mr. Marcussen: That is all, your Honor.

The Court: That is all, Mr. Mull.

Mr. Brookes: May I ask a question?

The Court: Oh, yes.

Redirect Examination

Q. (By Mr. Brookes): Mr. Marcussen asked you whether you had advised Mr. John Dumbra about the legality of the transaction by which he specified he meant the income tax consequences, the OPA consequences, I think, approximately, is the language that he used, and certain other consequences before December 6, and you answered "No". Were you consulted by them or did you advise them with respect to those matters at any time after December 6?

Mr. Marcussen: I object to that, if your Honor please, on the ground it is incompetent, irrelevant

(Testimony of A. M. Mull, Jr.)

and immaterial what he advised them after this transaction.

The Court: I will sustain the objection.

Mr. Brookes: No further questions, your Honor.

(Witness excused.)

* * * * * [268]

Whereupon

HARRY P. MEYERS

was called as a witness on behalf of the Respondent and having been first duly sworn, testified as follows: [271]

Direct Examination

The Clerk: State your name and address, please.

The Witness: Harry P. Meyers, Geyserville, California.

Q. (By Mr. Marcussen): What is your occupation?

A. At the present time it's farming.

Q. Are you connected with the Northern Sonoma Wine Company?

A. I was manager at one time, but I am still Director on the Board.

Q. When were you manager?

A. Oh, from '34 to about '45.

Q. Yes. I hand you this—strike that, please. I hand you Respondent's Exhibit T for identification, and ask you if you know what that is.

A. These are all copies that you and Mr. Gould took from our files at Geyserville, wines that we sold to Lucca Wine Company back in '43.

(Testimony of Harry P. Meyers.)

Q. And what are they, invoices?

A. They are copies of invoices that were sent out with the wine at that time.

Q. Sales to whom?

A. Lucca Wine Company.

Q. And for what period of time?

A. Well, they are all for '43, except I see—there is [272] one invoice here for '42.

Q. December 29, 1942?

A. That's right.

Q. What is the earliest one for '43?

A. There is one January 5. I imagine there wasn't any before that.

Q. Yes. What is the latest one for 1943?

A. June the 8th.

Q. And was this file subpoenaed by the Bureau of Internal Revenue? A. It was.

Q. And you surrendered it to Mr. Gould?

A. I did.

Q. In my presence? A. That's right.

Q. Now, you said "our files." Whose file?

A. Northern Sonoma Wine.

Q. Is that a cooperative?

A. It is, yes.

Q. And when was it organized?

A. It was first organized, they took over the winery from the Geyserville Growers, in '38, and I don't remember just when the Northern Sonoma Winery was organized, but it was around '37, '38, in there.

Mr. Marcussen: I offer this as Respondent's Ex-

(Testimony of Harry P. Meyers.)

hibit [273] next in order, if your Honor please.

The Court: Exhibit T?

Mr. Marcussen: Yes.

The Court: Admitted.

(Whereupon the document marked Respondent's Exhibit T for identification was received.)

Mr. Marcussen: And I will ask Mr. Brookes whether he will stipulate that these are the invoices covering sales which Mr. Particelli testified were made to him by Geyserville Growers.

Mr. Brookes: I stipulate, Counsel, that when Mr. Particelli referred to Geyserville Growers as a source of some of the wine he bought, he was referring to the company known, or the winery known as the Northern Sonoma Wines.

Mr. Marcussen: That is sufficient. I know you are correct in your form of the stipulation. I didn't mean to place a misinterpretation on it.

Mr. Brookes: I stated it differently than you did, Counsel, because I am sure there are sales earlier than this.

Q. (By Mr. Marcussen): Mr. Meyers, do you recall the day you obtained those files for Mr. Gould? A. Do I remember the day?

Q. Yes, I do not mean the date, I mean do you remember the occasion? [274]

A. You mean when you and Mr. Gould were up there?

Q. Yes.

A. I asked permission from—

(Testimony of Harry P. Meyers.)

Q. I am not asking you what you did, do you remember the occasion now?

A. I do, yes. I don't remember the day any more.

Q. Will you state whether or not that is a complete record, or is that a complete file of the invoices of shipments of wine, dry and sweet wine, made to Mr. Particelli for the year 1943?

A. I couldn't say that that was all of it. You know those files, they were taken out of the regular files, put in a box in the back room, and I haven't gone through them since you and Mr. Gould were up there.

Q. When you submitted that file to Mr. Gould, did you submit to him all of the invoices covering purchases by Mr. Particelli for the year 1943?

A. Well, if you remember, Mr. Rose, the present wine manager, knew where these boxes were filed and he assisted Mr. Gould in digging out this file, and they came out in the office with the file.

Q. Didn't he assist you in getting that file?

A. He assisted me, both of us, I guess.

Q. You looked through the files, too?

A. I looked through the file. [275]

Q. You didn't find any other invoices?

A. No, I didn't.

Q. You have no reason to believe, do you, that the files as you gave them to Mr. Gould were not the entire files covering all of the 1943 transactions?

A. As far as I know, that was all that was in that folder, and that is all there was.

(Testimony of Harry P. Meyers.)

Mr. Marcussen: Yes, that is all.

The Court: Cross examination.

Cross Examination

Mr. Brookes: No questions.

The Court: That is all, Mr. Meyers.

(Witness excused.)

Mr. Marcussen: Call Mr. Mondavi.

Whereupon

ROBERT MONDAVI

was called as a witness on behalf of the Respondent and having been first duly sworn, testified as follows:

Direct Examination

The Clerk: State your name and address, please.

The Witness: Robert Mondavi, St. Helena, California.

Q. (By Mr. Marcussen:) What is your business? A. I am a vintner.

Q. At St. Helena? [276]

A. That's right.

Q. What is the name of the company?

A. C. Mondavi & Sons.

Q. Is C. Mondavi your father?

A. That's right.

Q. And you were about to add—

A. Also known as the Charles Krug Winery.

Q. I take it that C. Mondavi & Sons operate and own the Charles Krug Winery?

A. That's right.